34:1B-362, 54:10A-5.39b, 54:4-12b
LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2024 **CHAPTER:** 33

NJSA: 34:1B-362, 54:10A-5.39b, 54:4-12b Revises various provisions of film and digital media content production tax credit program.

BILL NO: S3275 (Substituted for A4448 (1R))

SPONSOR(S) Gopal, Vin and others

DATE INTRODUCED: 5/16/2024

COMMITTEE: **ASSEMBLY:** --

SENATE: Economic Growth
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 06/28/2024

SENATE: 06/28/2024

DATE OF APPROVAL: 7/10/2024

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (S3275 ScaSca (2R) enacted)

ADVANCE LAW Yes

PAMPHLET LAW Yes

S3275

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

REPRINT(S): Yes SEG 6/10/24 1R
SBA 6/26/24 2R

TECHNICAL REVIEW: No

COMMITTEE STATEMENT: **ASSEMBLY**: No

SENATE: Yes Economic Growth
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

A4448 (1R)

INTRODUCED BILL: (Includes sponsor(s) statement) Yes

REPRINT(S): Yes ABU 6/26/24 1R

TECHNICAL REVIEW:		No	
COMMITTEE STATEMENT:	**ASSEMBLY**:	Yes	Budget
	SENATE:	No	

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT:	No
LEGISLATIVE FISCAL ESTIMATE:	Yes
VETO MESSAGE:	No
GOVERNOR'S PRESS RELEASE ON SIGNING:	Yes

FOLLOWING WERE PRINTED:

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P.L. 2024, CHAPTER 33, ***approved July 10, 2024***
Senate, No. 3275 ***(Second Reprint)***

AN ACT concerning the film and digital media content production tax credit program and amending [2]P.L.2020, c.156 and[2] P.L.2018, c.56.

[1]1. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to read as follows:

C.34:1B-362 Combined value, all tax credits.

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310); the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335); the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.); section 6 of P.L.2010, c.57 (C.34:1B-209.4), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.) shall not exceed an overall cap of $11.5 billion over a nine-year period, subject to the conditions and limitations set forth in this section. Of this $11.5 billion, $2.5 billion shall be reserved for transformative projects approved under the Aspire Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), shall be subject to the following limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(b) for tax credits awarded under the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156

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:
[1]Senate SEG committee amendments adopted June 10, 2024.
[2]Senate SBA committee amendments adopted June 26, 2024.

(C.34:1B-277 through 34:1B-287), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $60 million and the total value of tax credits awarded over the entirety of the nine-year period shall not exceed $300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), the total value of tax credits awarded during the nine-year period shall not exceed $1,200,000,000; provided, however, tax credits shall not be available under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), until January 1, 2026. Beginning January 1, 2026, the authority shall annually award tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), valuing no greater than $130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than $70 million for projects located in the eight southern counties of the State. If during any year of operation of the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the authority awards tax credits pursuant to the program in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $1.1 billion. If the authority awards tax credits in an amount less than the annual limitation, then the uncommitted portion of the annual limitation shall be made available for qualified offshore wind projects awarded under section 6 of P.L.2010, c.57 (C.34:1B-

209.4), pursuant to subparagraph (h) of this paragraph, or New Jersey studio partners [and], New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies awarded under sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph (i) of this paragraph and subsection d. of this section. During each of the first six years of the nine-year period, the authority shall annually award tax credits valuing no greater than $715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than $385 million for projects located in the southern counties of the State under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). If during any of the first six years of the nine-year period, the authority awards tax credits under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the nine-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the nine-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located;

(g) except as provided in subparagraph (j) of this paragraph, for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits awarded during the nine-year period shall not exceed $2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that the total value of tax credits awarded to any transformative project shall not exceed $400 million;

(h) from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $350,000,000 shall be made available for qualified offshore wind projects awarded a

credit pursuant to section 6 of P.L.2010, c.57 (C.34:1B-209.4) during the first three years of the nine-year period;

(i) beginning in fiscal year 2023, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, additional amounts shall be made available for New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b); and

(j) beginning in fiscal year 2024, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $500,000,000 may be annually transferred for the award to transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), provided that: (i) the remaining allocation of tax credits otherwise available for transformative projects, pursuant to subparagraph (g) of this paragraph, is less than $1,000,000,000; and (ii) the authority board determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate, which may include the criteria set forth in paragraph (2) of this subsection. If a transfer of tax credits is made pursuant to this subparagraph, the authority shall award no greater than 65 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the northern counties of the State and no greater than 35 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the southern counties of the State.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than $200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the State under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;

(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of $11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the nine-year period.

d. Notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the authority pursuant to subparagraph (f) of paragraph (1) of subsection b. of this section to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made available for tax credits allowed to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this subsection shall be as follows:

(1) in fiscal year 2023, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies;

(2) in fiscal year 2024, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies; and

(3) in fiscal year 2025, $250,000,000 for New Jersey studio partners **[**and**]**, $250,000,000 for New Jersey film-lease production

companies, and $300,000,000 for taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies.

If the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved to New Jersey studio partners and New Jersey film-lease production companies in any fiscal year pursuant to this subsection is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year.

(cf: P.L.2023, c.197, s.13)[1]

[1][1.] 2.[1] Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to read as follows:

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1]; and for reality shows, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey[2],[2] and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1];

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

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which

materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an [1]**[**approved**]** appropriate[1] logo approved by the commission, in the end credits of the film;

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least [1]**[**$2,000,000**]** [2]**[**$4,000,000[1]**]** $2,000,000[2] of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [2]; provided, however, that for applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed[2];

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

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

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

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

[2](3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed by a qualified independent post-production company;

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

(c) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.[2]

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

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that

apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c. and d. of section 2 of P.L.2018, c.56 (C.54A:4-12b).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) [1], and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362),[1] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio

partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners

and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The authority shall

also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1][be allowed, in the order in which they have submitted an application,] have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

[2]Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).[2]

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense

items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. <u>Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who</u>

are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1]**[**any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content**]** the following digitally formatted and distributed content, which content includes data or information created in analog form but [2]**[**reformatting**]** reformatted[2] in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; [2]content containing text, graphics, or photographs;[2] sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production

expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show [1]**[**owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2)**]** has obtained a minimum [2]**[**10**]** six[2] episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a

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

"Highly compensated individual" means [2], for New Jersey studio partners and New Jersey film-lease production companies,[2] an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production [2]and for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production[2]. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1][or] and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey [1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the

taxpayer has made the withholding required by subsection g. of this section.

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

[2]"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly-traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly-traded entity.[2]

"Loan out company" means [2]: for applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for applications submitted on or after the effective date of P.L. , c. (pending before the Legislature as this bill),[2] a personal service corporation or other entity [2],[2] [1]authorized to do business in New Jersey[1] [2],[2] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and

unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility [2][and who will shoot] . In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots[2] at least 50 percent of the total principal photography shoot days of the project within New Jersey at the New Jersey film-lease partner facility [2]; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary

or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility's receipt of a temporary or final certificate of occupancy[2]. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

[2]In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.[2]

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New

Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf [2]or for its benefit[2] such that the designated New Jersey studio partner [2]: (1)[2] controls such film or product during pre-production, production, and post-production [2][, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.)] ; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred[2]. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1][and][1] the costs of computer software and hardware, data processing, visualization

technologies, sound synchronization, editing, and the rental of facilities and equipment [1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. [2][[1]"Qualified[1]] For applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified[2]] digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media [2][[1]; costs incurred for the design, maintenance, and hosting of websites; costs incurred in digital search engine optimization or pay-per-click campaigns;[1]][2] or other costs not directly related to the production of digital media content. [2]For applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content.[2] Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content [1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection

with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; [1]**[**and**]** expenses for a story, script, or [2],[2] scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,[1] payment in excess of [1]**[**$500,000**]** $750,000[1] to a highly compensated individual for [1]**[**costs for a story, script, or scenario used in the production of a film and**]**[1] wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines [1]**[**,**]** ; and for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines,[1] except as follows:

(1) for a New Jersey studio partner that incurs less than [1]**[**$50,000,000**]** $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]**[**$50,000,000**]** $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

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

(cf: P.L.2023, c.97, s.5)

[1][2.]**]** 3.**[1]** Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to read as follows:

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or

New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1]; and for reality shows, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business [2],[2] in New Jersey, and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1];

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth

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

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least [1][$2,000,000] [2][$4,000,000[1]] $2,000,000[2] of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [2]; provided, however, that for applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed[2];

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

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

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

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

[2](3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed by a qualified independent post-production company;

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

(c) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.[2]

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

necessary, to the seven taxable years following the taxable year for which the tax credit was allowed.

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

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

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

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

75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsections c. and d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection e. of this section may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) [2],[2] [1]and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362)[1] [2],[2] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to

subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits

allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey

studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1]**[**be allowed, in the order in which they have submitted an application,**]** have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

[2]Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available to

taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).[2]

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-

payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. <u>Notwithstanding any provision of this section to the contrary, qualified film production</u>

expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1][any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content] the following digitally formatted and distributed content, which content includes data or information created in analog form but [2][reformatting] reformatted[2] in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; [2]content containing text, graphics, or photographs;[2] sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, sports event, [1][or reality show,][1] a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes [1], or a reality show, except if the production company [2][of the reality show][2] has obtained a minimum [2][10] six[2] episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally

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

"Highly compensated individual" means [2], for New Jersey studio partners and New Jersey film-lease production companies,[2] an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production [2]and for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production[2]. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1][or] and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey [1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the

taxpayer has made the withholding required by subsection h. of this section.

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

[2]"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly-traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly-traded entity.[2]

"Loan out company" means [2]: for applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for applications submitted on or after the effective date of P.L. , c. (pending before the Legislature as this bill),[2] a personal service corporation or other entity [2],[2] [1]authorized to do business in New Jersey[1] [2],[2] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and

unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey [2]**[**and who will shoot**]** . In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots[2] at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility [2]; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the

forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility's receipt of a temporary or final certificate of occupancy[2]. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

[2]In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.[2]

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film

production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf [2]or for its benefit[2] such that the designated New Jersey studio partner [2]: (1)[2] controls such film or product during pre-production, production, and post-production [2][, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.)] ; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred[2]. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1][and][1] the costs of

computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment [1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. [2][[]"Qualified[]] For applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified[2] digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media [2][[1]; costs incurred for the design, maintenance, and hosting of websites; costs incurred in digital search engine optimization or pay-per-click campaigns;[1]][2] or other costs not directly related to the production of digital media content. [2]For applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content.[2] Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content [1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified

film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; [1]**[**and**]** expenses for a story, script or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,[1] payment in excess of [1]**[**$500,000**]** $750,000[1] to a highly compensated individual for [1]**[**costs for a story, script, or scenario used in the production of a film and**]**[1] wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[1]**[**,**]** ; and [2],[2] for New Jersey studio partners and New Jersey film-lease production companies [2],[2] payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines,[1] except as follows:

(1) for a New Jersey studio partner that incurs less than [1]**[**$50,000,000**]** $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]**[**$50,000,000**]** $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.2023, c.97, s.6)

[2]4. Section 4 of P.L.2018, c.56 is amended to read as follows:

4. a. A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.[,] in an amount equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, [2034] 2039, provided that:

(1) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;

(2) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(3) the director and the authority have verified that the applicant has met or made good faith efforts in achieving those goals.

b. The amount of a tax credit allowed pursuant to subsection a. of this section shall increase to four percent of the qualified film [or digital media content] production expenses of the taxpayer if the diversity plan, in addition to meeting the requirements of subsection a.

of this section, outlines specific goals that include hiring persons as performers in the film ⟦or digital media production⟧ who are: (i) women or members of ⟦ethnic⟧ a minority ⟦groups that are underrepresented in film or digital media productions⟧ group; (ii) ⟦if credited,⟧ residents of New Jersey for at least 12 months preceding the beginning of filming or recording ⟦,and if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality⟧; and (iii) members of a bona fide labor union representing film and television performers.

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

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

(cf: P.L.2021, c.367, s.3)[2]

[1]⟦3.⟧ [2]⟦4.[1]⟧ 5.[2] This act shall take effect immediately [1]⟦and shall apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date; provided, however, a taxpayer that has received a tax credit certificate and has not used such tax credit certificate before January 1, 2024 shall be allowed to surrender the tax credit certificate to the authority and be issued a new tax credit certificate under the provisions of this act⟧[1].

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

CHAPTER 33

AN ACT concerning the film and digital media content production tax credit program and amending P.L.2020, c.156 and P.L.2018, c.56.

1. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to read as follows:

C.34:1B-362 Combined value, all tax credits.

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310); the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335); the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.); section 6 of P.L.2010, c.57 (C.34:1B-209.4), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.) shall not exceed an overall cap of $11.5 billion over a nine-year period, subject to the conditions and limitations set forth in this section. Of this $11.5 billion, $2.5 billion shall be reserved for transformative projects approved under the Aspire Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), shall be subject to the following limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(b) for tax credits awarded under the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $60 million and the total value of tax credits awarded over the entirety of the nine-year period shall not exceed $300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), the total value of tax credits awarded during the nine-year period shall not exceed $1,200,000,000; provided, however, tax credits shall not be available under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), until January 1, 2026. Beginning January 1, 2026, the authority shall annually award tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through

53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), valuing no greater than $130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than $70 million for projects located in the eight southern counties of the State. If during any year of operation of the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the authority awards tax credits pursuant to the program in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $1.1 billion. If the authority awards tax credits in an amount less than the annual limitation, then the uncommitted portion of the annual limitation shall be made available for qualified offshore wind projects awarded under section 6 of P.L.2010, c.57 (C.34:1B-209.4), pursuant to subparagraph (h) of this paragraph, or New Jersey studio partners, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies awarded under sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph (i) of this paragraph and subsection d. of this section. During each of the first six years of the nine-year period, the authority shall annually award tax credits valuing no greater than $715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than $385 million for projects located in the southern counties of the State under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). If during any of the first six years of the nine-year period, the authority awards tax credits under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the nine-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the nine-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located;

(g) except as provided in subparagraph (j) of this paragraph, for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits awarded during the nine-year period shall not exceed $2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that the total value of tax credits awarded to any transformative project shall not exceed $400 million;

(h) from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $350,000,000 shall be made available for qualified offshore wind projects awarded a credit pursuant to section 6 of P.L.2010, c.57 (C.34:1B-209.4) during the first three years of the nine-year period;

(i) beginning in fiscal year 2023, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, additional amounts shall be made available for New Jersey studio partners, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b); and

(j) beginning in fiscal year 2024, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $500,000,000 may be annually transferred for the award to transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), provided that: (i) the remaining allocation of tax credits otherwise available for transformative projects, pursuant to subparagraph (g) of this paragraph, is less than $1,000,000,000; and (ii) the authority board determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate, which may include the criteria set forth in paragraph (2) of this subsection. If a transfer of tax credits is made pursuant to this subparagraph, the authority shall award no greater than 65 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the northern counties of the State and no greater than 35 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the southern counties of the State.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than $200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the State under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;

(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of $11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the nine-year period.

d. Notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the authority pursuant to subparagraph (f) of paragraph (1) of subsection b. of this section to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made available for tax credits allowed to New Jersey studio partners, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this subsection shall be as follows:

(1) in fiscal year 2023, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies;

(2) in fiscal year 2024, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies; and

(3) in fiscal year 2025, $250,000,000 for New Jersey studio partners, $250,000,000 for New Jersey film-lease production companies, and $300,000,000 for taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies.

If the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved to New Jersey studio partners and New Jersey film-lease production companies in any fiscal year pursuant to this subsection is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year.

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

C.54:10A-5.39b Credit against tax imposed, qualified film production expenses.

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in New Jersey, provided, however, that for applications submitted after the effective date of P.L.2024, c.33, qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed;

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

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

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

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

(3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services, including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services, including visual effects services performed at a New Jersey film-lease production facility, or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services, including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services, including visual effects services performed by a qualified independent post-production company;

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

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

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

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

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

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362),

up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey

studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit

transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for

the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are subject to withholding, but not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means the following: digitally formatted and distributed content, which content includes data or information created in analog form, but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show has obtained a minimum six-episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act,"

N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means, for New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production and, for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey and the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey, provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey, to the extent that the property is located in New Jersey during its use or consumption, if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

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

"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section, including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly traded entity.

"Loan out company" means, for applications submitted prior to the effective date of P.L.2024, c.33, a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production and, for applications submitted on or after the effective date of P.L.2024, c.33, a personal service corporation or other entity authorized to do business in New Jersey that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not

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

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility. In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots at least 50 percent of the total principal photography shoot days of the project within New Jersey at the New Jersey film-lease partner facility; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or

developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility's receipt of a temporary or final certificate of occupancy. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf or for its benefit such that the designated New Jersey studio partner: (1) controls such film or product during pre-production, production, and post-production; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include, but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. For applications submitted prior to the effective date of P.L.2024, c.33, "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, advertising digital media, or other costs not directly related to the production of digital media content. For applications submitted after the effective date of P.L.2024, c.33, "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content, or any costs included in an application submitted to the authority, shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film, including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include, but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do

business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; expenses for a story, script, or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $750,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines; and, for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey studio partner that incurs less than $25,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $25,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

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

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

C.54A:4-12b Tax credit, film expenses, certain.

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall

be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed and goods purchased through vendors authorized to do business in New Jersey, provided, however, that for applications submitted after the effective date of P.L.2024, c.33, qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed;

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

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

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

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

(3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services, including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services, including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount

equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services, including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services, including visual effects services performed by a qualified independent post-production company;

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

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

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

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

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

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

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

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

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the

director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for

that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-

lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this

subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are subject to withholding, but not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional

purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming; a sports event; a production that solicits funds; a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3; a production primarily for private, industrial, corporate, or institutional purposes; or a reality show, except if the production company has obtained a minimum six-episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means, for New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production and, for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey and the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey, to the extent that the property is located in New Jersey during its use or consumption, if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection h. of this section.

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

"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly traded entity.

"Loan out company" means, for applications submitted prior to the effective date of P.L.2024, c.33, a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production and, for applications submitted on or after the effective date of P.L.2024, c.33, a personal service corporation or other entity, authorized to do business in New Jersey, that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey. In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility’s receipt of a temporary or final certificate of occupancy. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company

contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf or for its benefit such that the designated New Jersey studio partner: (1) controls such film or product during pre-production, production, and post-production; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include, but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross

Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. For applications submitted prior to the effective date of P.L.2024, c.33, "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, advertising digital media, or other costs not directly related to the production of digital media content. For applications submitted after the effective date of P.L.2024, c.33, “qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content, or any costs included in an application submitted to the authority, shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film, including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include, but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; expenses for a story, script, or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New

Jersey film-lease production companies, payment in excess of $750,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines; and, for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey studio partner that incurs less than $25,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $25,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

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

4. a. A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(1) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;

(2) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(3) the director and the authority have verified that the applicant has met or made good faith efforts in achieving those goals.

b. The amount of a tax credit allowed pursuant to subsection a. of this section shall increase to four percent of the qualified film production expenses of the taxpayer if the diversity plan, in addition to meeting the requirements of subsection a. of this section, outlines specific goals that include hiring persons as performers in the film who are: (i) women or members of a minority group; (ii) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and (iii) members of a bona fide labor union representing film and television performers.

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

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

5. This act shall take effect immediately.

Approved July 10, 2024.

SENATE, No. 3275

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MAY 16, 2024

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator JOHN F. MCKEON
District 27 (Essex and Passaic)

SYNOPSIS

Revises film and digital media content production tax credit program to include eligibility for compensation not subject to gross income tax due to reciprocity agreement with another state.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/10/2024)

AN ACT concerning the film and digital media content production tax credit program and amending P.L.2018, c.56.

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

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

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio

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 <u>thus</u> is new matter.

partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as prescribed by the

director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

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

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this

section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply

against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only

available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this

section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

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

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be

prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross

Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms);

content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2). "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

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

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

made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

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

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

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on

commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film

production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: <u>the</u> wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due<u>, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state</u>; and the costs of computer software and hardware, data processing, visualization technologies,

sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later

than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey studio partner that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

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

(cf: P.L.2023, c.97, s.5)

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

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for services

performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

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

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

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

A business entity that is not a gross income "taxpayer" as defined and used in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit under this section, but otherwise meets all the other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section, and the application of an otherwise

allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subsection.

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

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this

paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and

subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits

available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b.

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

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the

independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out

company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

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

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

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

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

"Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

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

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection h. of this section.

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

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

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that

otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services

on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

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

costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey studio partner that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.2023, c.97, s.6)

3. This act shall take effect immediately and shall apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date; provided, however, a taxpayer that has received a tax credit certificate and has not used such tax credit certificate before January 1, 2024 shall be allowed to surrender the tax credit certificate to the authority and be issued a new tax credit certificate under the provisions of this act.

STATEMENT

This bill revises certain provisions of the film and digital media content production tax credit program to include eligibility for wages and salaries paid to persons who are not subject to tax under

the "New Jersey Gross Income Tax Act" due to a tax reciprocity agreement with another state.

Under the film and digital media content production tax credit program, the New Jersey Economic Development Authority awards corporation business tax and gross income tax credits to eligible taxpayers based on the qualified film production expenses or qualified digital media content production expenses incurred for use within certain parts of the State. In addition to certain other eligibility requirements, at least 50 percent of the qualified digital media content production expenses incurred by a taxpayer are required to be for wages and salaries paid to full-time or full-time equivalent employees in New Jersey in order to qualify for the digital media content production tax credit.

Under current law, the terms "qualified film production expenses" and "qualified digital media content production expenses" are defined to include, among other expenses, the wages and salaries paid to individuals who are employed for the purposes of the production and who are subject to the tax imposed by the "New Jersey Gross Income Tax Act." Current law also defines the term "full-time or full-time equivalent employee" to include persons working not less than 35 hours per week, or other standard of service accepted by custom or practice as full-time or full-time equivalent employment, and whose wages and salaries are subject to withholding as provided in the "New Jersey Gross Income Tax Act."

This bill expands the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries that are paid to individuals who are employed for the purposes of the production and who are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state. The bill also provides that these expenses would include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Additionally, the bill amends the definition "full-time or full-time equivalent employee" to include otherwise eligible persons whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Currently, the State has entered into a reciprocal income tax agreement with the Commonwealth of Pennsylvania. Under the terms of this agreement, compensation paid to Pennsylvania residents who are employed in New Jersey is not subject to tax under the "New Jersey Gross Income Tax Act." Accordingly, the bill provides that wages and salaries paid to certain Pennsylvania

residents may be included as qualified film production expenses and qualified digital media content production expenses, provided that these persons are employed in the New Jersey for the purposes of the film or digital media content production.

The provisions of this bill would take effect immediately and apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date. However, any taxpayer that has previously received a tax credit certificate, but has not used such tax credit certificate before January 1, 2024, would be allowed to surrender the tax credit certificate to the authority and receive a new tax credit certificate in accordance with the provisions of this bill.

[First Reprint]

SENATE, No. 3275

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MAY 16, 2024

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator JOHN F. MCKEON
District 27 (Essex and Passaic)

Co-Sponsored by:
Senators Moriarty, Johnson and Mukherji

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on June 10, 2024, with amendments.

(Sponsorship Updated As Of: 6/26/2024)

AN ACT concerning the film and digital media content production tax credit program and amending P.L.2018, c.56.

AN ACT concerning the film and digital media content production tax credit program and amending [1]P.L.2020, c.156 and[1] P.L.2018, c.56.

[1]1. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to read as follows:

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310); the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335); the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.); section 6 of P.L.2010, c.57 (C.34:1B-209.4), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.) shall not exceed an overall cap of $11.5 billion over a nine-year period, subject to the conditions and limitations set forth in this section. Of this $11.5 billion, $2.5 billion shall be reserved for transformative projects approved under the Aspire Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), shall be subject to the following limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(b) for tax credits awarded under the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

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:
[1]Senate SEG committee amendments adopted June 10, 2024.

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $60 million and the total value of tax credits awarded over the entirety of the nine-year period shall not exceed $300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), the total value of tax credits awarded during the nine-year period shall not exceed $1,200,000,000; provided, however, tax credits shall not be available under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), until January 1, 2026. Beginning January 1, 2026, the authority shall annually award tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), valuing no greater than $130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than $70 million for projects located in the eight southern counties of the State. If during any year of operation of the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the authority awards tax credits pursuant to the program in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $1.1 billion. If the authority awards tax credits in an amount less than the annual limitation, then the uncommitted portion of the annual limitation shall be made available for qualified offshore wind projects awarded under section 6 of P.L.2010, c.57 (C.34:1B-209.4), pursuant to subparagraph (h) of this paragraph, or New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey

film-lease production companies awarded under sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph (i) of this paragraph and subsection d. of this section. During each of the first six years of the nine-year period, the authority shall annually award tax credits valuing no greater than $715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than $385 million for projects located in the southern counties of the State under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). If during any of the first six years of the nine-year period, the authority awards tax credits under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the nine-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the nine-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located;

(g) except as provided in subparagraph (j) of this paragraph, for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits awarded during the nine-year period shall not exceed $2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that the total value of tax credits awarded to any transformative project shall not exceed $400 million;

(h) from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $350,000,000 shall be made available for qualified offshore wind projects awarded a credit pursuant to section 6 of P.L.2010, c.57 (C.34:1B-209.4) during the first three years of the nine-year period;

(i) beginning in fiscal year 2023, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, additional amounts shall be made available for New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b); and

(j) beginning in fiscal year 2024, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $500,000,000 may be annually transferred for the award to transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), provided that: (i) the remaining allocation of tax credits otherwise available for transformative projects, pursuant to subparagraph (g) of this paragraph, is less than $1,000,000,000; and (ii) the authority board determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate, which may include the criteria set forth in paragraph (2) of this subsection. If a transfer of tax credits is made pursuant to this subparagraph, the authority shall award no greater than 65 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the northern counties of the State and no greater than 35 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the southern counties of the State.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than $200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the State under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;

(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of $11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the nine-year period.

d. Notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the authority pursuant to subparagraph (f) of paragraph (1) of subsection b. of this section to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made available for tax credits allowed to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this subsection shall be as follows:

(1) in fiscal year 2023, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies;

(2) in fiscal year 2024, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies; and

(3) in fiscal year 2025, $250,000,000 for New Jersey studio partners **[**and**]**, $250,000,000 for New Jersey film-lease production companies, and $300,000,000 for taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies.

If the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved to New Jersey studio partners and New Jersey film-lease production companies in any fiscal year pursuant to this subsection is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year.

(cf: P.L.2023, c.197, s.13)[1]

[1]**[**1.**]** 2.[1] Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to read as follows:

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

(c) the film includes, when determined to be appropriate by the commission, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an [1]**[**approved**]**

appropriate[1] logo approved by the commission, in the end credits of the film;

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least [1]**[**$2,000,000**]** $4,000,000[1] of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred

for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

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

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1

et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsections c. and d. of section 2 of P.L.2018, c.56 (C.54A:4-12b).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) [1], and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362),[1] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the

value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage

of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for

each such category from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1][be allowed, in the order in which they have submitted an application,] have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent

fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses

and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1]**[**any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content**]** the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatting in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes

or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show [1]**[**owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2)**]** has obtained a minimum 10 episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the taxpayer pays

a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1]**[**or**]** and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey[1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

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

"Loan out company" means a personal service corporation or other entity [1]authorized to do business in New Jersey[1] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production

offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New

Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the

federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1]**[**and**]**[1] the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment[1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media[1]; costs incurred for the design, maintenance, and hosting of websites; costs incurred in digital search engine optimization or pay-per-click campaigns;[1] or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content[1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; **[1]**[and]**[1]** expenses for a story, script, or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,**[1]** payment in excess of **[1]**[$500,000]**[1]** $750,000 to a highly compensated individual for **[1]**[costs for a story, script, or scenario used in the production of a film and]**[1]** wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines**[1]**[,]**[1]** ; and for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music

directors, producers, and performers, other than background actors with no scripted lines,[1] except as follows:

(1) for a New Jersey studio partner that incurs less than [1]**[**$50,000,000**]** $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]**[**$50,000,000**]** $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

i. A business that is not a "taxpayer" as defined and used in the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) and therefore is not directly allowed a credit under this section, but is a business entity that is classified as a partnership for federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in subsection

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

(cf: P.L.2023, c.97, s.5)

[1]**[**2.**]** 3.[1] Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to read as follows:

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1]; and for reality shows, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business in New Jersey, and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1];

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least [1]**[**$2,000,000**]** $4,000,000[1] of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey;

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for services

performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

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

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

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

A business entity that is not a gross income "taxpayer" as defined and used in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and therefore is not directly allowed a credit under this section, but otherwise meets all the other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section, and the application of an otherwise

allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subsection.

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

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) **[1]**and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362)**[1]** to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by

this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and

subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits

available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56

(C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1]**[**be allowed, in the order in which they have submitted an application,**]** have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the

authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal

services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means means [1][any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content] the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatting in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain

obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, sports event, **[1]**[or reality show,]**[1]** a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes**[1]**, or a reality show, except if the production company of the reality show has obtained a minimum 10 episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service**[1]**. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the “New Jersey Gross

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

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

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1]**[**or**]** and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey[1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection h. of this section.

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

"Loan out company" means a personal service corporation or other entity [1]authorized to do business in New Jersey[1] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs

on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New

Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1]**[**and**]**[1] the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment[1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent

contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media[1]; costs incurred for the design, maintenance, and hosting of websites; costs incurred in digital search engine optimization or pay-per-click campaigns;[1] or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content[1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the

authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; [1]**[**and**]** expenses for a story, script or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,[1] payment in excess of [1]**[**$500,000**]** $750,000[1] to a highly compensated individual for [1]**[**costs for a story, script, or scenario used in the production of a film and**]**[1] wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[1]**[**,**]** ; and for New Jersey studio partners and New Jersey film-lease production companies payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines,[1] except as follows:

(1) for a New Jersey studio partner that incurs less than [1]**[**$50,000,000**]** $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]**[**$50,000,000**]** $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.2023, c.97, s.6)

[1][3.]**]** 4.**[1]** This act shall take effect immediately **[1]**[and shall apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date; provided, however, a taxpayer that has received a tax credit certificate and has not used such tax credit certificate before January 1, 2024 shall be allowed to surrender the tax credit certificate to the authority and be issued a new tax credit certificate under the provisions of this act**]**[1].

[Second Reprint]

SENATE, No. 3275

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED MAY 16, 2024

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)
Senator JOHN F. MCKEON
District 27 (Essex and Passaic)
Assemblywoman MARGIE DONLON, M.D.
District 11 (Monmouth)
Assemblywoman ELIANA PINTOR MARIN
District 29 (Essex and Hudson)
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

Co-Sponsored by:
Senators Moriarty, Mukherji, Johnson, McKnight, Assemblywomen Reynolds-Jackson, Murphy, Assemblyman Miller, Assemblywomen Hall, Speight and Park

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 26, 2024, with amendments.

(Sponsorship Updated As Of: 6/28/2024)

AN ACT concerning the film and digital media content production tax credit program and amending [2]P.L.2020, c.156 and[2] P.L.2018, c.56.

[1]1. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to read as follows:

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310); the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335); the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.); section 6 of P.L.2010, c.57 (C.34:1B-209.4), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.) shall not exceed an overall cap of $11.5 billion over a nine-year period, subject to the conditions and limitations set forth in this section. Of this $11.5 billion, $2.5 billion shall be reserved for transformative projects approved under the Aspire Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), shall be subject to the following limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(b) for tax credits awarded under the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302), the total value of tax credits annually

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:
[1]Senate SEG committee amendments adopted June 10, 2024.
[2]Senate SBA committee amendments adopted June 26, 2024.

awarded during each of the first six years of the nine-year period shall not exceed $60 million and the total value of tax credits awarded over the entirety of the nine-year period shall not exceed $300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), the total value of tax credits awarded during the nine-year period shall not exceed $1,200,000,000; provided, however, tax credits shall not be available under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), until January 1, 2026. Beginning January 1, 2026, the authority shall annually award tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), valuing no greater than $130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than $70 million for projects located in the eight southern counties of the State. If during any year of operation of the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the authority awards tax credits pursuant to the program in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $1.1 billion. If the authority awards tax credits in an amount less than the annual limitation, then the uncommitted portion of the annual limitation shall be made available for qualified offshore wind projects awarded under section 6 of P.L.2010, c.57 (C.34:1B-209.4), pursuant to subparagraph (h) of this paragraph, or New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies awarded under sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph (i) of this paragraph and subsection d. of this section.

During each of the first six years of the nine-year period, the authority shall annually award tax credits valuing no greater than $715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than $385 million for projects located in the southern counties of the State under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). If during any of the first six years of the nine-year period, the authority awards tax credits under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the nine-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the nine-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located;

(g) except as provided in subparagraph (j) of this paragraph, for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits awarded during the nine-year period shall not exceed $2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that the total value of tax credits awarded to any transformative project shall not exceed $400 million;

(h) from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $350,000,000 shall be made available for qualified offshore wind projects awarded a credit pursuant to section 6 of P.L.2010, c.57 (C.34:1B-209.4) during the first three years of the nine-year period;

(i) beginning in fiscal year 2023, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act,"

sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, additional amounts shall be made available for New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b); and

(j) beginning in fiscal year 2024, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $500,000,000 may be annually transferred for the award to transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), provided that: (i) the remaining allocation of tax credits otherwise available for transformative projects, pursuant to subparagraph (g) of this paragraph, is less than $1,000,000,000; and (ii) the authority board determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate, which may include the criteria set forth in paragraph (2) of this subsection. If a transfer of tax credits is made pursuant to this subparagraph, the authority shall award no greater than 65 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the northern counties of the State and no greater than 35 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the southern counties of the State.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than $200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the State under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;

(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of $11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the nine-year period.

d. Notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the authority pursuant to subparagraph (f) of paragraph (1) of subsection b. of this section to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made available for tax credits allowed to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this subsection shall be as follows:

(1) in fiscal year 2023, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies;

(2) in fiscal year 2024, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies; and

(3) in fiscal year 2025, $250,000,000 for New Jersey studio partners **[**and**]**, $250,000,000 for New Jersey film-lease production companies, and $300,000,000 for taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies.

If the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved to New Jersey studio partners and New Jersey film-lease production companies in any fiscal year pursuant to this subsection is less than the cumulative

total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year.

(cf: P.L.2023, c.197, s.13)[1]

[1][1.] 2.[1] Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to read as follows:

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production [1]; and for reality shows, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [2],[2] and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1];

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least [1]**[**$2,000,000**]** [2]**[**$4,000,000[1]**]** $2,000,000[2] of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [2]; provided, however, that for applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed[2];

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to

section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

[2](3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed by a qualified independent post-production company;

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

(c) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.[2]

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax

return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

d. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.), or the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsection c. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection a. or subsection b. of this section may be applied against the purchaser's or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be subject to the same limitations and conditions that apply to the use of a credit

pursuant to subsections c. and d. of section 2 of P.L.2018, c.56 (C.54A:4-12b).

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) [1], and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362),[1] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and

pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the

commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and

New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1][be allowed, in the order in which they have submitted an application,] have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

[2]Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).[2]

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in

the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies

with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1][any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content] the following digitally formatted and distributed content, which content includes data or information created in analog form but [2][reformatting] reformatted[2] in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; [2]content containing text, graphics, or photographs;[2] sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the

case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show [1][owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2)] has obtained a minimum [2][10] six[2] episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an

individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means [2], for New Jersey studio partners and New Jersey film-lease production companies,[2] an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production [2]and for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production[2]. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1][or] and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey [1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

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

[2]"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly-traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly-traded entity.[2]

"Loan out company" means [2]: for applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for applications submitted on or after the effective date of P.L. , c. (pending before the Legislature as this bill),[2] a personal service corporation or other entity [2],[2] [1]authorized to do business in New Jersey[1] [2],[2] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey

studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility [2]**[**and who will shoot**]** . In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots[2] at least 50 percent of the total principal photography shoot days of the project within New Jersey at the New Jersey film-lease partner facility [2]; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space,

and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility's receipt of a temporary or final certificate of occupancy[2]. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

[2]In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.[2]

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film

production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf [2]or for its benefit[2] such that the designated New Jersey studio partner [2]: (1)[2] controls such film or product during pre-production, production, and post-production [2][, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.)] ; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred[2]. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1][and][1] the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment [1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent

contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. [2]**[**"Qualified**]** For applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified[2] digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media [2]**[**[1]; costs incurred for the design, maintenance, and hosting of websites; costs incurred in digital search engine optimization or pay-per-click campaigns;[1]**]**[2] or other costs not directly related to the production of digital media content. [2]For applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content.[2] Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content [1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of

a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; **[1]**[and]**[1]** expenses for a story, script, or **[2]**,**[2]** scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,**[1]** payment in excess of **[1]**[$500,000]**[1]** $750,000**[1]** to a highly compensated individual for **[1]**[costs for a story, script, or scenario used in the production of a film and]**[1]** wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines **[1]**[,]**[1]** ; and for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines,**[1]** except as follows:

(1) for a New Jersey studio partner that incurs less than **[1]**[$50,000,000]**[1]** $25,000,000**[1]** in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs **[1]**[$50,000,000]**[1]** $25,000,000**[1]** or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals,

an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

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

(cf: P.L.2023, c.97, s.5)

[1][2.]**]** 3.**[1]** Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to read as follows:

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year

commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1]; and for reality shows, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business [2],[2] in New Jersey, and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1];

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

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

otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least [1][$2,000,000] [2][$4,000,000[1]] $2,000,000[2] of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [2]; provided, however, that for applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed[2];

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

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

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

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

[2](3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed by a qualified independent post-production company;

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

(c) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.[2]

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

d. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a

taxpayer in respect of a distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

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

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

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

tax credit transfer certificate obtained by a purchaser or assignee under subsection e. of this section may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) [2,2] [1]and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362)[1] [2,2] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and

except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements

between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another

taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1]**[**be allowed, in the order in which they have submitted an application,**]** have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

[2]Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).[2]

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved

pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for

the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the

"New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1][any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content] the following digitally formatted and distributed content, which content includes data or information created in analog form but [2][reformatting] reformatted[2] in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; [2]content containing text, graphics, or photographs;[2] sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal

photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, sports event, [1][or reality show,][1] a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes [1], or a reality show, except if the production company [2][of the reality show][2] has obtained a minimum [2][10] six[2] episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an

individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means [2], for New Jersey studio partners and New Jersey film-lease production companies,[2] an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production [2]and for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production[2]. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1][or] and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey [1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection h. of this section.

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

[2]"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly-traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly-traded entity.[2]

"Loan out company" means [2]: for applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for applications submitted on or after the effective date of P.L. , c. (pending before the Legislature as this bill),[2] a personal service corporation or other entity [2],[2] [1]authorized to do business in New Jersey[1] [2],[2] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey

studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey **[2]**[and who will shoot]**[2]** . In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots**[2]** at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility **[2]**; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of

the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility's receipt of a temporary or final certificate of occupancy[2]. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

[2]In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.[2]

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that

film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf [2]or for its benefit[2] such that the designated New Jersey studio partner [2]: (1)[2] controls such film or product during pre-production, production, and post-production [2][, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.)] ; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred[2]. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1][and][1] the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment [1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1].

Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. [2]**[**"Qualified**]** For applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified[2] digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media [2]**[**[1]; costs incurred for the design, maintenance, and hosting of websites; costs incurred in digital search engine optimization or pay-per-click campaigns;[1]**]**[2] or other costs not directly related to the production of digital media content. [2]For applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content.[2] Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content [1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a

vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; [1]**[**and**]** expenses for a story, script or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,[1] payment in excess of [1]**[**$500,000**]** $750,000[1] to a highly compensated individual for [1]**[**costs for a story, script, or scenario used in the production of a film and**]**[1] wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[1]**[**,**]** ; and [2],[2] for New Jersey studio partners and New Jersey film-lease production companies [2],[2] payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines,[1] except as follows:

(1) for a New Jersey studio partner that incurs less than [1]**[**$50,000,000**]** $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]**[**$50,000,000**]** $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the

State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.2023, c.97, s.6)

[2]4. Section 4 of P.L.2018, c.56 is amended to read as follows:

4. a. A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.[,] in an amount equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, **[**2034**]** 2039, provided that:

(1) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;

(2) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(3) the director and the authority have verified that the applicant has met or made good faith efforts in achieving those goals.

b. The amount of a tax credit allowed pursuant to subsection a. of this section shall increase to four percent of the qualified film **[**or digital media content**]** production expenses of the taxpayer if the diversity plan, in addition to meeting the requirements of subsection a. of this section, outlines specific goals that include hiring persons as performers in the film **[**or digital media production**]** who are: (i) women or members of **[**ethnic**]** a minority **[**groups that are underrepresented in film or digital media productions**]** group; (ii)

[if credited,**]** residents of New Jersey for at least 12 months preceding the beginning of filming or recording **[**,and if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality**]**; and (iii) members of a bona fide labor union representing film and television performers.

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

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

(cf: P.L.2021, c.367, s.3)**[2]**

[1][3.**] [2][**4.**[1]] 5.[2]** This act shall take effect immediately **[1][**and shall apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date; provided, however, a taxpayer that has received a tax credit certificate and has not used such tax credit certificate before January 1, 2024 shall be allowed to surrender the tax credit certificate to the authority and be issued a new tax credit certificate under the provisions of this act**]**[1].

SENATE ECONOMIC GROWTH COMMITTEE

STATEMENT TO

SENATE, No. 3275

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 2024

The Senate Economic Growth Committee reports favorably and with committee amendments Senate Bill No. 3275.

As amended and reported, this bill revises certain provisions of the film and digital media content production tax credit program (program) to include eligibility for wages and salaries paid to persons who are not subject to tax under the "New Jersey Gross Income Tax Act" due to a tax reciprocity agreement with another state. The bill also makes certain changes to the availability of tax credits under and the requirements of the program.

Availability of Certain Unused Aspire and Emerge Tax Credits

This bill amends current law providing that certain unused tax credits authorized for award under the "New Jersey Aspire Program Act" (Aspire) and "Emerge Program Act" (Emerge) are to be made available for the provision of tax credits made available through the program. Under current law, the unused tax credits are to be made available for tax credits allowed to New Jersey studio partners and New Jersey film-lease production companies. This bill amends the law so that tax credits are additionally to be made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies that are awarded tax credits under the program, which value is not to exceed $300 million in fiscal year 2025.

State Income Tax Reciprocity

Under the program, the New Jersey Economic Development Authority (authority) awards corporation business tax and gross income tax credits to eligible taxpayers based on the qualified film production expenses or qualified digital media content production expenses incurred for use within certain parts of the State. In addition to certain other eligibility requirements, at least 50 percent of the qualified digital media content production expenses incurred by a taxpayer are required to be for wages and salaries paid to full-time or full-time equivalent employees in New Jersey in order to qualify for the digital media content production tax credit.

Under current law, the terms “qualified film production expenses” and “qualified digital media content production expenses” are defined to include, among other expenses, the wages and salaries paid to individuals who are employed for the purposes of the production and who are subject to the tax imposed by the “New Jersey Gross Income Tax Act.” Current law also defines the term “full-time or full-time equivalent employee” to include persons working not less than 35 hours per week, or other standard of service accepted by custom or practice as full-time or full-time equivalent employment, and whose wages and salaries are subject to withholding as provided in the “New Jersey Gross Income Tax Act.”

This bill expands the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries that are paid to individuals who are employed for the purposes of the production and who are not subject to tax under the “New Jersey Gross Income Tax Act” due to the provisions of a tax reciprocity agreement with another state. The bill also provides that these expenses include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the “New Jersey Gross Income Tax Act” due to the provisions of a tax reciprocity agreement with another state.

Additionally, the bill amends the definition “full-time or full-time equivalent employee” to include otherwise eligible persons whose wages and salaries are not subject to tax under the “New Jersey Gross Income Tax Act” due to the provisions of a tax reciprocity agreement with another state.

Currently, the State has entered into a reciprocal income tax agreement with the Commonwealth of Pennsylvania. Under the terms of this agreement, compensation paid to Pennsylvania residents who are employed in New Jersey is not subject to tax under the “New Jersey Gross Income Tax Act.” Accordingly, the bill provides that wages and salaries paid to certain Pennsylvania residents may be included as qualified film production expenses and qualified digital media content production expenses, provided that these persons are employed in New Jersey for the purposes of the film or digital media content production.

Modification of Certain Program Requirements

Among other requirements under current law: (1) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are to be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey; or (2) the qualified film production expenses of the taxpayer during the tax period for services performed, and goods purchased, through vendors authorized to do business in New Jersey,

are to exceed $1 million per production. The bill requires that both conditions be met for reality shows.

The bill also amends current law that requires at least $2 million of the total digital media content production expenses of a taxpayer be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey to be approved for a tax credit in an amount equal to 30 percent of the qualified digital media content production expenses of the taxpayer during a tax period. Instead, the bill requires a minimum of $4 million for this provision.

Under current law, taxpayers that have applied for and have not been allowed a tax credit under the program because the total amount of tax credits allowed to taxpayers for the tax period exceeds the amount of tax credits available in that year are to be allowed in the order in which they have been submitted. This bill modifies this provision, requiring that those taxpayers instead have their applications approved by the authority, provided the application otherwise satisfies program requirements.

Modification of Definitions

The bill amends the definition of "film" to provide that a reality show is included in the term "film" if the production company of the reality show has obtained a minimum 10 episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. Under current law, a reality show is included in the definition of "film" if the production company of the reality show leases or otherwise occupies a production facility of a certain size for a certain period of time and invests a certain amount of money in the facility within a designated enterprise zone or UEZ-impacted business district.

The bill changes the definition of "loan out company" to require such companies to be authorized to do business in New Jersey.

The bill changes the definition of "qualified film production expenses" to provide that the term does not include expenses incurred in marketing or advertising a film; expenses for a story, script, or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $750,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines; and for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, with certain exceptions.

Under current law, the term "qualified film production expenses" is defined to exclude expenses incurred in marketing or advertising a

film; and payment in excess of $500,000 to a highly compensated individual for costs of a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, with certain exceptions.

The bill provides that for a New Jersey studio partner that incurs less than $25 million in qualified film production expenses in New Jersey, in excess of amounts paid to highly compensated individuals, an individual amount not to exceed $18 million of the wages or salaries or other compensation for certain individuals constitutes qualified film production expenses. Under current law, this provision applies to New Jersey studio partners that incur less than $50 million in qualified film production expenses in New Jersey.

Additionally, the bill provides that for New Jersey studio partners that incur $25 million or more in qualified film production expenses in New Jersey, in excess of amounts paid to highly compensated individual, an additional amount, to exceed $72 million, of wages or salaries or other compensation for certain individuals constitutes qualified production expenses. Under current law, this provision applies to New Jersey studio partners that incur $50 million or more in qualified film production expenses in New Jersey.

The bill also amends existing program definitions for "digital media content," "full-time or full-time equivalent employee," "incurred in New Jersey," and "qualified digital media content production expenses."

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that certain unused tax credits authorized for award under the "New Jersey Aspire Program Act" and "Emerge Program Act" are to be made available for tax credits allowed, through the program, to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, which value is not to exceed $300 million in fiscal year 2025;

(2) require that for reality shows to qualify under the program, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business in New Jersey, and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1 million per production;

(3) require that at least $4 million, rather than $2 million as required under current law, of the total digital media content production expenses of a taxpayer be incurred for services performed, and goods purchased through vendors authorized to do business, in

New Jersey to be approved for a tax credit in an amount equal to 30 percent of the qualified digital media content production expenses of the taxpayer during a tax period;

(4) provide that taxpayers that have applied for and have not been allowed a tax credit under the program, because the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for the tax period exceeds the amount of tax credits available in that year, are to have their applications approved by the authority, provided the application otherwise satisfies program requirements This modifies the requirement under current law that the authority allow tax credits, under these circumstances, in the order in which the taxpayers submitted applications;

(5) provide that qualified film production expenses and qualified digital media content production expenses include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state. Previously, the bill provided for inclusion of such wages and salaries when not subject to the gross income tax without clarification as to withholding status on those wages and salaries;

(6) amend the definitions of certain terms for purposes of the program;

(7) remove a provision for certain retroactive applicability of the bill;

(8) update the title and synopsis to reflect changes to the bill; and

(9) make technical changes to the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]
SENATE, No. 3275

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2024

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 3275 (1R).

As amended and reported, this bill revises certain provisions of the film and digital media content production tax credit program (program) to include eligibility for wages and salaries paid to persons who are not subject to tax under the "New Jersey Gross Income Tax Act" due to a tax reciprocity agreement with another state. The bill also makes certain changes to the availability of tax credits under the requirements of the program.

Availability of Certain Unused Aspire and Emerge Tax Credits

This bill amends current law providing that certain unused tax credits authorized for award under the "New Jersey Aspire Program Act" (Aspire) and "Emerge Program Act" (Emerge) are to be made available for the provision of tax credits allowed under the program. Under current law, the unused tax credits are to be made available for tax credits allowed to New Jersey studio partners and New Jersey film-lease production companies. This bill amends the law so that tax credits are also to be made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies that are awarded tax credits under the program, which value is not to exceed $300 million in fiscal year 2025.

Additionally, this bill provides that, of this $300 million, up to $100 million per year may be made available to taxpayers that are New Jersey studio partners and New Jersey film-lease production companies, at the discretion of the New Jersey Economic Development Authority (authority).

Under the bill, taxpayers that have applied for and have not been allowed a tax credit under the program, because the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for the tax period exceeds the amount of tax credits available in that year, are to have their applications approved by the authority, provided the applications otherwise satisfy program requirements. This modifies the requirement under current law that the authority allow tax credits, under

these circumstances, in the order in which the taxpayers submitted applications.

Eligibility Modifications

Among other requirements under current law: (1) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are to be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey; or (2) the qualified film production expenses of the taxpayer during the tax period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, are to exceed $1 million per production. The bill requires that both conditions be met for reality shows.

In addition, the bill provides that for the purposes of calculating a taxpayer's total digital media content production expenses in New Jersey, for any application submitted on or after the effective date of this bill, qualified wage and salary payments made to full-time employees working on digital media are not to be deemed an expense incurred for services performed. Under certain conditions, a taxpayer may be allowed a tax credit in an amount equal to: (1) 40 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner; or (2) 35 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed by a qualified independent post-production company.

State Income Tax Reciprocity

Under the program, the authority awards corporation business tax credits and gross income tax credits to eligible taxpayers based on the qualified film production expenses or qualified digital media content production expenses incurred for use within certain parts of the State. In addition to certain other eligibility requirements, at least 50 percent of the qualified digital media content production expenses incurred by a taxpayer are required to be for wages and salaries paid to full-time or full-time equivalent employees in New Jersey in order to qualify for the digital media content production tax credit.

Under current law, the terms "qualified film production expenses" and "qualified digital media content production expenses" are defined to include, among other expenses, the wages and salaries paid to individuals who are employed for the purposes of the production and who are subject to the tax imposed by the "New Jersey Gross Income Tax Act." Current law also defines the term "full-time or full-time equivalent employee" to include persons working not less than 35 hours per week, or any other standard of service accepted by custom or

practice as full-time or full-time equivalent employment, and whose wages and salaries are subject to withholding as provided in the "New Jersey Gross Income Tax Act."

This bill expands the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries that are paid to individuals who are employed for the purposes of the production and who are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state. The bill also provides that these expenses include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Additionally, the bill amends the definition of "full-time or full-time equivalent employee" to include otherwise eligible persons whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Currently, the State has entered into a reciprocal income tax agreement with the Commonwealth of Pennsylvania. Under the terms of this agreement, compensation paid to Pennsylvania residents who are employed in New Jersey is not subject to tax under the "New Jersey Gross Income Tax Act." Accordingly, the bill provides that wages and salaries paid to certain Pennsylvania residents may be included as qualified film production expenses and qualified digital media content production expenses, provided that these persons are employed in New Jersey for the purposes of the film or digital media content production.

Modification of Definitions

The bill amends the definition of "digital media content" to mean the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video.

The bill amends the definition of "film" to include certain reality shows if the production company has obtained a minimum six episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. Under current law, a reality show is included in the definition of "film" if the production company of the reality show leases or otherwise occupies a production facility of a certain size for a certain period of time and invests a certain amount of money in the facility within a designated enterprise zone or UEZ-impacted business district.

The bill amends the definition of "highly compensated individual" to mean: (1) for New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production; and (2) for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production.

The bill amends the definition of "incurred in New Jersey" to provide that, under certain conditions, if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey, to the extent that the property is located in New Jersey during its use or consumption.

The bill amends the definition of "loan out company" to require, for applications submitted on or after the bill's effective date, the personal service corporation or entity operating as a "loan out company" to be authorized to do business in New Jersey. The bill adds that for applications submitted prior to the bill's effective date, a "loan out company" means a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production.

The bill amends the definition of "New Jersey film-lease production company" to require that, when a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, either: (1) 50 percent of a project's total principal photography shoot days within New Jersey be shot at the New Jersey film-lease partner facility; or (2) 33 percent of the total qualified film production expenses of the project are incurred at the New Jersey film-lease partner facility. The bill provides additional requirements if a New Jersey film-lease partner facility has not yet received a certificate of occupancy. If the authority determines that an entity has failed to meet the qualifications of a New Jersey film-lease production company or is out of compliance, the bill authorizes the authority to recapture the portion of any tax credit awarded that had only been available by virtue of the entity's status as a New Jersey film-lease production company.

The bill amends the definition of "New Jersey studio partner" to include an entity that controls distribution rights for a resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred. The bill also removes a requirement under current law that certain entities, in order to be considered New Jersey studio partners, are required to hold the copyright to certain works made for hire.

The bill amends the definition of "qualified digital media content production expenses" to include the costs for post-production,

including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering. The bill adds that the definition also includes wages and salaries paid or due, which are not subject to gross income tax due to reciprocity agreements with other states. In addition, the bill excludes costs included in an application submitted to the authority from this term and provides certain other exclusions based upon whether an application was submitted before or after the bill's effective date.

The bill also amends the definition of "qualified film production expenses" to conform with the provisions of the bill that provide for the treatment of wages and salaries not subject to gross income tax due to tax reciprocity agreements with other states.

Finally, as amended, this bill adds the definition of "independent post-production company" to mean a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films, which entity does not meet certain criteria listed in the bill.

Tax Credit Eligibility and Diversity Plan

Under current law, a taxpayer whose application is accompanied by a diversity plan may be approved for a tax credit equal to two percent of the qualified film production expenses or the digital media content production expenses of the taxpayer during a tax period commencing on or after July 1, 2018 but before July 1, 2034. This bill extends this period to before July 1, 2039 and increases the allowed tax credit percentage for digital media content production expenses from two percent to four percent.

Current law permits an increase in the percentage of tax credits allowed to four percent of qualified film production expenses or digital media content production expenses, provided that a diversity plan meets certain conditions. Pursuant to the bill, the conditions upon an increase to four percent are relevant only to qualified film production expenses.

To be eligible for such an increase in tax credit, under current law, a taxpayer is to include specific goals within a diversity plan that include hiring persons as performers who are: (1) members of ethnic minority groups that are underrepresented in film or digital media productions; (2) if credited, residents of New Jersey for at least 12 months preceding the beginning of filming or recording and, if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality; and (3) members of a bona fide labor union representing film and television performers.

This bill amends these categories to include persons who are: (1) women or members of a minority group; (2) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and

(3) members of a bona fide labor union representing film and television performers.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) remove a provision that would have amended the requirement under current law that at least $2 million of the total digital media content production expenses of a taxpayer be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey to be approved for a tax credit in an amount equal to 30 percent of the qualified digital media content production expenses of the taxpayer during a tax period;

(2) provide that for purposes of calculating a taxpayer's total digital media content production expenses in New Jersey, for any application submitted on or after the effective date of this bill, qualified wage and salary payments made to full-time employees working on digital media are not to be deemed an expense incurred for services performed;

(3) provide that certain taxpayers may be allowed a tax credit in an amount equal to 40 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

(4) provide that certain taxpayers may be allowed a tax credit in an amount equal to 35 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed by a qualified independent post-production company;

(5) provide that, beginning in fiscal year 2025, up to an additional $100 million from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies may be made available from unused tax credits authorized for award under Aspire and Emerge, at the authority's discretion, for tax credits allowed under the program to New Jersey studio partners and New Jersey film-lease production companies;

(6) amend the definitions of the following terms for purposes of the program: "digital media content," "film," "highly compensated individual," "loan out company," "New Jersey film-lease production company," "New Jersey studio partner," and "qualified digital media content production expenses";

(7) add the definition for "independent post-production company";

(8) provide that a taxpayer whose application is accompanied by a diversity plan may be approved for a tax credit equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a tax period commencing on or after July 1, 2018 but before July 1, 2039. The

amendments extend the availability period for this incentive from the current provision ending the period before July 1, 2034. The amendments also increase the allowed tax credit percentage for digital media content production expenses from two percent to four percent, removing the requirement for a diversity plan to meet certain conditions in order for a taxpayer to be allowed a tax credit equal to four percent of the taxpayer's digital media content production expenses;

(9) require that a taxpayer include specific goals in a diversity plan, to qualify for a tax credit equal to four percent of the qualified film production expenses, that include hiring persons as performers who are: (1) women or members of a minority group; (2) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and (3) members of a bona fide labor union representing film and television performers;

(10) update the title to reflect changes to the bill; and

(11) make technical changes to the bill.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 3275

STATE OF NEW JERSEY
221st LEGISLATURE

DATED: JULY 22, 2024

SUMMARY

Synopsis:	Revises various provisions of film and digital media content production tax credit program.
Type of Impact:	Annual State revenue decrease to the General Fund and Property Tax Relief Fund.
Agencies Affected:	New Jersey Economic Development Authority. Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	**FY 2025 through FY 2039**
Direct State Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) determines that the bill will have an indeterminate impact on State revenues. While expanding the film and digital media content production tax credit program to include certain wages paid to nonresident employees as qualified expenses will likely decrease revenues, other changes such as reallocating unused tax credits from other programs to the film tax credit program and modifying certain eligibility criteria may increase or decrease revenue losses depending on taxpayer behavior. The amount of the State revenue loss is indeterminate and will depend on the number of taxpayers claiming the enhanced tax credits and the proportion of their qualified expenses attributable to compensation paid to employees not subject to New Jersey gross income tax due to reciprocity agreements with other states.

- The magnitude of the revenue impact will depend on several factors, including the number of taxpayers claiming the enhanced tax credits, the proportion of their qualified expenses attributable to compensation paid to employees not subject to New Jersey gross income tax due to reciprocity agreements, the amount of unused tax credits from other incentive programs that are reallocated to the film tax credit program, and the extent to which taxpayers modify their activities in response to the bill's provisions.

- By allowing wages paid to certain out-of-state residents, such as Pennsylvania residents employed in New Jersey, to be included as qualified expenses, the bill will likely increase the

total amount of tax credits awarded to taxpayers that employ these individuals in the production of films or digital media content in the State.

BILL DESCRIPTION

This bill amends certain provisions of law governing the Film and Digital Media Tax Credit Program to expand the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries paid to nonresident employees who are not subject to New Jersey gross income tax due to a reciprocity agreement with another state, such as Pennsylvania. The bill provides that these expenses would include payments made by a taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the New Jersey Gross Income Tax Act due to the provisions of a tax reciprocity agreement with another state. Additionally, the bill amends the definition of "full-time or full-time equivalent employee" under the tax credit program to include otherwise eligible individuals whose wages and salaries are not subject to tax under the New Jersey Gross Income Tax Act due to the provisions of a tax reciprocity agreement with another state.

The bill also makes several other changes to the Film and Digital Media Tax Credit Program. It allows unused tax credits from the Aspire and Emerge programs to be made available for the provision of film tax credits to a broader range of taxpayers, subject to certain limitations. The bill modifies eligibility requirements for reality shows and the calculation of digital media content production expenses. It allows certain digital media content production expenses incurred for postproduction services to qualify for enhanced tax credit percentages.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will have an indeterminate impact on State revenues. Expanding the tax credit program to allow wages paid to certain nonresident employees, particularly Pennsylvania residents, to be included as qualified film and digital media content production expenses will likely increase the total amount of expenses that are eligible for tax credits. This change would result in larger tax credit amounts being awarded, leading to greater revenue losses, holding all other factors constant. The OLS notes that, under the bill, unused tax credits from the Aspire and Emerge programs are to be made available for taxpayers receiving credits under the film tax credit program, subject to certain limitations. The bill also makes various modifications to the definitions and eligibility criteria under the film tax credit program, which could affect taxpayer behavior and the types of expenses that qualify. Depending on how taxpayers respond, these changes may serve to increase or decrease the amount of credits awarded. Therefore, the net effect of the bill on State revenues is uncertain, as it will depend on the interactions between the expansion of eligible expenses, the reallocation of unused credits from other programs, and taxpayer response to the modified program requirements. More information

would be needed on the potential credit amounts involved and taxpayer behavior to quantify the revenue impact with greater certainty.

Section:	*Revenue, Finance, and Appropriations*
Analyst:	*Patrick Walsh* *Assistant Fiscal Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4448

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:
Assemblywoman MARGIE DONLON, M.D.
District 11 (Monmouth)
Assemblywoman ELIANA PINTOR MARIN
District 29 (Essex and Hudson)

SYNOPSIS

Revises film and digital media content production tax credit program to include eligibility for compensation not subject to gross income tax due to reciprocity agreement with another state.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 6/17/2024)

AN ACT concerning the film and digital media content production tax credit program and amending P.L.2018, c.56.

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

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

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner

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 <u>thus</u> is new matter.

or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162

(C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

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

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a

cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal

year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not

approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) shall not exceed a cumulative total of $30,000,000 in

fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

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

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the

director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an

employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic

commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2). "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a

week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

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

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New

Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

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

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

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner

facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies

with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: <u>the</u> wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due<u>, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state</u>; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an

independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses

incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey studio partner that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

i. A business that is not a "taxpayer" as defined and used in the

"Corporation Business Tax Act (1945)," P.L.1945, c.162 (C.54:10A-1 et seq.) and therefore is not directly allowed a credit under this section, but is a business entity that is classified as a partnership for federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), or a limited liability company formed under the "Revised Uniform Limited Liability Company Act," P.L.2012, c.50 (C.42:2C-1 et seq.), or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in subsection (c) of section 4 of P.L.1945, c.162 (C.54:10A-4), but otherwise meets all other requirements of this section, shall be considered an eligible applicant and "taxpayer" as that term is used in this section.
(cf: P.L.2023, c.97, s.5)

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

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

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

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

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

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

income taxpayers pursuant to the other requirements of this subsection.

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

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits

allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph

(1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer

certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not

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

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer.

The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

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

taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

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

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including

expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

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

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., <u>or whose wages are not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state,</u> regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

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

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection h. of this section.

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

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

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a

production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-

lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey and who will shoot at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services

constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a

film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except as follows:

(1) for a New Jersey studio partner that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of

amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.2023, c.97, s.6)

3. This act shall take effect immediately and shall apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date; provided, however, a taxpayer that has received a tax credit certificate and has not used such tax credit certificate before January 1, 2024 shall be allowed to surrender the tax credit certificate to the authority and be issued a new tax credit certificate under the provisions of this act.

STATEMENT

This bill revises certain provisions of the film and digital media content production tax credit program to include eligibility for wages and salaries paid to persons who are not subject to tax under the “New Jersey Gross Income Tax Act” due to a tax reciprocity agreement with another state.

Under the film and digital media content production tax credit program, the New Jersey Economic Development Authority awards corporation business tax and gross income tax credits to eligible taxpayers based on the qualified film production expenses or qualified digital media content production expenses incurred for use within certain parts of the State. In addition to certain other eligibility requirements, at least 50 percent of the qualified digital media content production expenses incurred by a taxpayer are required to be for wages and salaries paid to full-time or full-time equivalent employees in New Jersey in order to qualify for the digital media content production tax credit.

Under current law, the terms "qualified film production expenses" and "qualified digital media content production expenses" are defined to include, among other expenses, the wages and salaries paid to individuals who are employed for the purposes of the production and who are subject to the tax imposed by the "New Jersey Gross Income Tax Act." Current law also defines the term "full-time or full-time equivalent employee" to include persons working not less than 35 hours per week, or other standard of service accepted by custom or practice as full-time or full-time equivalent employment, and whose wages and salaries are subject to withholding as provided in the "New Jersey Gross Income Tax Act."

This bill expands the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries that are paid to individuals who are employed for the purposes of the production and who are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state. The bill also provides that these expenses would include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Additionally, the bill amends the definition "full-time or full-time equivalent employee" to include otherwise eligible persons whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Currently, the State has entered into a reciprocal income tax agreement with the Commonwealth of Pennsylvania. Under the terms of this agreement, compensation paid to Pennsylvania residents who are employed in New Jersey is not subject to tax under the "New Jersey Gross Income Tax Act." Accordingly, the bill provides that wages and salaries paid to certain Pennsylvania residents may be included as qualified film production expenses and qualified digital media content production expenses, provided that

these persons are employed in the New Jersey for the purposes of the film or digital media content production.

The provisions of this bill would take effect immediately and apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date. However, any taxpayer that has previously received a tax credit certificate, but has not used such tax credit certificate before January 1, 2024, would be allowed to surrender the tax credit certificate to the authority and receive a new tax credit certificate in accordance with the provisions of this bill.

[First Reprint]

ASSEMBLY, No. 4448

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JUNE 3, 2024

Sponsored by:
Assemblywoman MARGIE DONLON, M.D.
District 11 (Monmouth)
Assemblywoman ELIANA PINTOR MARIN
District 29 (Essex and Hudson)
Assemblyman BENJIE E. WIMBERLY
District 35 (Bergen and Passaic)

Co-Sponsored by:
Assemblywomen Reynolds-Jackson, Murphy, Assemblyman Miller, Assemblywomen Hall, Speight and Park

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 26, 2024, with amendments.

(Sponsorship Updated As Of: 6/28/2024)

AN ACT concerning the film and digital media content production tax credit program and amending [1]P.L.2020, c.156 and[1] P.L.2018, c.56.

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

[1]1. Section 98 of P.L.2020, c.156 (C.34:1B-362) is amended to read as follows:

98. a. The combined value of all tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276); the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287); the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302); the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310); the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321); the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335); the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.); section 6 of P.L.2010, c.57 (C.34:1B-209.4), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.) shall not exceed an overall cap of $11.5 billion over a nine-year period, subject to the conditions and limitations set forth in this section. Of this $11.5 billion, $2.5 billion shall be reserved for transformative projects approved under the Aspire Program.

b. (1) The total value of tax credits awarded under any constituent program of the "New Jersey Economic Recovery Act of 2020," P.L.2020, c.156 (C.34:1B-269 et al.) and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), shall be subject to the following limitations, except as otherwise provided in subsection c. of this section:

(a) for tax credits awarded under the "Historic Property Reinvestment Act," sections 2 through 8 of P.L.2020, c.156 (C.34:1B-270 through 34:1B-276), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

(b) for tax credits awarded under the "Brownfields Redevelopment Incentive Program Act," sections 9 through 19 of P.L.2020, c.156 (C.34:1B-277 through 34:1B-287), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $50 million;

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:
[1]Assembly ABU committee amendments adopted June 26, 2024.

(c) for tax credits awarded under the "New Jersey Innovation Evergreen Act," sections 20 through 34 of P.L.2020, c.156 (C.34:1B-288 through 34:1B-302), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $60 million and the total value of tax credits awarded over the entirety of the nine-year period shall not exceed $300,000,000;

(d) for tax credits awarded under the "Food Desert Relief Act," sections 35 through 42 of P.L.2020, c.156 (C.34:1B-303 through 34:1B-310), the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $40 million;

(e) for tax credits awarded under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), and the "Cultural Arts Incentives Program Act," P.L.2023, c.197 (C.34:1B-383 et al.), the total value of tax credits awarded during the nine-year period shall not exceed $1,200,000,000; provided, however, tax credits shall not be available under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), until January 1, 2026. Beginning January 1, 2026, the authority shall annually award tax credits under the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), valuing no greater than $130 million for projects located in the 13 northern counties of the State, and the authority shall annually award tax credits valuing no greater than $70 million for projects located in the eight southern counties of the State. If during any year of operation of the "New Jersey Community-Anchored Development Act," sections 43 through 53 of P.L.2020, c.156 (C.34:1B-311 through 34:1B-321), the authority awards tax credits pursuant to the program in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year without consideration to the county in which a project is located;

(f) for tax credits awarded under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, the total value of tax credits annually awarded during each of the first six years of the nine-year period shall not exceed $1.1 billion. If the authority awards tax credits in an amount less than the annual limitation, then the uncommitted portion of the annual limitation shall be made available for qualified offshore wind projects awarded under section 6 of P.L.2010, c.57 (C.34:1B-209.4), pursuant to subparagraph (h) of this paragraph, or New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey

film-lease production companies awarded under sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b), pursuant to subparagraph (i) of this paragraph and subsection d. of this section. During each of the first six years of the nine-year period, the authority shall annually award tax credits valuing no greater than $715 million for projects located in the northern counties of the State, and the authority shall annually award tax credits valuing no greater than $385 million for projects located in the southern counties of the State under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.). If during any of the first six years of the nine-year period, the authority awards tax credits under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), in an amount less than the annual limitation for projects located in northern counties or southern counties, as applicable, the uncommitted portion of the annual limitation shall be available to be deployed by the authority in a subsequent year, provided that the uncommitted portion of tax credits shall be awarded for projects located in the applicable geographic area, except that (i) after the completion of the third year of the nine-year period, the authority may deploy 50 percent of the uncommitted portion of tax credits for any previous year without consideration to the county in which a project is located; and (ii) after the completion of the sixth year of the nine-year period, the authority may deploy all available tax credits, including the uncommitted portion of the annual limitation for any previous year, without consideration to the county in which a project is located;

(g) except as provided in subparagraph (j) of this paragraph, for tax credits awarded for transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), the total value of tax credits awarded during the nine-year period shall not exceed $2.5 billion. The total value of tax credits awarded for transformative projects in a given year shall not be subject to an annual limitation, except that the total value of tax credits awarded to any transformative project shall not exceed $400 million;

(h) from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $350,000,000 shall be made available for qualified offshore wind projects awarded a credit pursuant to section 6 of P.L.2010, c.57 (C.34:1B-209.4) during the first three years of the nine-year period;

(i) beginning in fiscal year 2023, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, additional amounts shall be made available for New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b); and

(j) beginning in fiscal year 2024, from the tax credits made available, pursuant to subparagraph (f) of this paragraph, to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335) and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), not including tax credits awarded for transformative projects, an amount not to exceed $500,000,000 may be annually transferred for the award to transformative projects under the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 through 34:1B-335), provided that: (i) the remaining allocation of tax credits otherwise available for transformative projects, pursuant to subparagraph (g) of this paragraph, is less than $1,000,000,000; and (ii) the authority board determines that the transfer of tax credits is warranted based on such criteria as the authority deems appropriate, which may include the criteria set forth in paragraph (2) of this subsection. If a transfer of tax credits is made pursuant to this subparagraph, the authority shall award no greater than 65 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the northern counties of the State and no greater than 35 percent of the tax credits transferred pursuant to this subparagraph to transformative projects located in the southern counties of the State.

(2) The authority may in any given year determine that it is in the State's interest to approve an amount of tax credits in excess of the annual limitations set forth in paragraph (1) of this subsection, but in no event more than $200,000,000 in excess of the annual limitation, upon a determination by the authority board that such increase is warranted based on specific criteria that may include:

(i) the increased demand for opportunities to create or retain employment and investment in the State as indicated by the volume of project applications and the amount of tax credits being sought by those applications;

(ii) the need to protect the State's economic position in the event of an economic downturn;

(iii) the quality of project applications and the net economic benefit to the State and municipalities associated with those applications;

(iv) opportunities for project applications to strengthen or protect the competitiveness of the State under the prevailing market conditions;

(v) enhanced access to employment and investment for underserved populations in distressed municipalities and qualified incentives tracts;

(vi) increased investment and employment in high-growth technology sectors and in projects that entail collaboration with education institutions in the State;

(vii) increased development proximate to mass transit facilities;

(viii) any other factor deemed relevant by the authority.

c. In the event that the authority in any year approves projects for tax credits in an amount less than the annual limitations set forth in paragraph (1) of subsection b. of this section, then the uncommitted portion of the annual limitation shall be available to be deployed by the authority in future years for projects under the same program; provided however, that in no event shall the aggregate amount of tax credits approved be in excess of the overall cap of $11.5 billion, and in no event shall the uncommitted portion of the annual limitation for any previous year be deployed after the conclusion of the nine-year period.

d. Notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the authority pursuant to subparagraph (f) of paragraph (1) of subsection b. of this section to the "New Jersey Aspire Program Act," sections 54 through 67 of P.L.2020, c.156 (C.34:1B-322 et seq.), and the "Emerge Program Act," sections 68 through 81 of P.L.2020, c.156 (C.34:1B-336 et al.), shall be made available for tax credits allowed to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to sections 1 and 2 of P.L.2018, c.56 (C.54:10A-5.39b and C.54A:4-12b). The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners **[**and**]**, New Jersey film-lease production companies, and taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this subsection shall be as follows:

(1) in fiscal year 2023, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies;

(2) in fiscal year 2024, $250,000,000 for New Jersey studio partners and $250,000,000 for New Jersey film-lease production companies; and

(3) in fiscal year 2025, $250,000,000 for New Jersey studio partners **[**and**]**, $250,000,000 for New Jersey film-lease production companies, and $300,000,000 for taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies.

If the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved to New Jersey studio partners and New Jersey film-lease production companies in any fiscal year pursuant to this subsection is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year.

(cf: P.L.2023, c.197, s.13)[1]

[1]**[**1.**]** 2.[1] Section 1 of P.L.2018, c.56 (C.54:10A-5.39b) is amended to read as follows:

1. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a privilege period commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [1]; provided, however, that for applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed[1];

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945,

c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

[1](3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period that are incurred for post-production services including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed by a qualified independent post-production company;

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

(c) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection g. of this section.[1]

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with

the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit authorized pursuant to this section is allowed. The order of priority in which the tax credit allowed pursuant to this section and any other tax credits allowed by law may be taken shall be as prescribed by the director. The amount of the tax credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

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

e. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) [1], and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362),[1] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal

year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall

recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b)

shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1]**[**be allowed, in the order in which they have submitted an application,**]** have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b) are not in excess of the amount of credits available.

[1]Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection b. of this section and subsection b. of section 2 of P.L.2018, c.56 (C.54A:4-12b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).[1]

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

f. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that

the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

g. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the

production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1][any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content] the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news,

current events, weather, and market reports or public programming, or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except if the production company of the reality show [1]**[**owns, leases, or otherwise occupies a production facility of no less than 20,000 square feet of real property for a minimum term of 24 months, and invests no less than $3,000,000 in such a facility within a designated enterprise zone established pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et al.), or a UEZ-impacted business district established pursuant to section 3 of P.L.2001, c.347 (C.52:27H-66.2)**]** has obtained a minimum six episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means [1], for New Jersey studio partners and New Jersey film-lease production companies,[1] an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production [1]and, for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production[1]. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1]**[**or**]** and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey [1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection g. of this section.

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

[1]"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly-traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly-traded entity.[1]

"Loan out company" means [1]: for applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for

applications submitted on or after the effective date of P.L. , c. (pending before the Legislature as this bill),[1] a personal service corporation or other entity [1], authorized to do business in New Jersey,[1] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.), in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or

portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey [1]**[**and who will shoot**]** . In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots[1] at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility [1]; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility's receipt of a temporary or final certificate of occupancy[1]. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

[1]In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.[1]

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf [1]or for its benefit[1] such that the designated New Jersey studio partner [1]: (1)[1] controls such film or product during pre-production, production, and post-production [1][, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.)] ; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred[1]. No more than three film

production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1]**[**and**]**[1] the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment [1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. [1]**[**"Qualified**]** For applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified[1] digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. [1]For applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content.[1] Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content [1],

or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection g. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; [1]**[**and**]** expenses for a story, script, or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,[1] payment in excess of [1]**[**$500,000**]** $750,000[1] to a highly compensated individual for [1]**[**costs for a story, script, or scenario used in the production of a film and**]**[1] wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines [1]; and, for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or

other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[1], except as follows:

(1) for a New Jersey studio partner that incurs less than [1]**[**$50,000,000**]** $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]**[**$50,000,000**]** $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.

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

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

(cf: P.L.2023, c.97, s.5)

[1]**[**2.**]** 3.[1] Section 2 of P.L.2018, c.56 (C.54A:4-12b) is amended to read as follows:

2. a. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 40 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 35 percent, of the qualified film production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, or the qualified film production expenses of the taxpayer during the taxable year for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1]; and for reality shows, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, exceed $1,000,000 per production[1];

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to, in the case of a taxpayer designated as a New Jersey studio partner or New Jersey film-lease production company, 35 percent, and in the case of a taxpayer other than a New Jersey studio partner or New Jersey film-lease production company, 30 percent, of the qualified film production expenses of the taxpayer during a taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

b. (1) A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to: 30 percent of the qualified digital media content production expenses of the taxpayer during a taxable year commencing on or after July 1, 2018 but before July 1, 2039, provided that:

(a) at least $2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey [1]; provided, however, that for applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), qualified wage and salary payments made to full-time employees working on digital media shall not be deemed an expense incurred for services performed[1];

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection b. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent for the qualified digital media content production expenses of the taxpayer during a taxable year that are

incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

[1](3) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 40 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or that are incurred by a New Jersey studio partner, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

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

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

(4) Notwithstanding the provisions of paragraph (1) of this subsection to the contrary, the tax credit allowed pursuant to this subsection against the tax otherwise due for the taxable year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified digital media content production expenses of the taxpayer during a taxable year that are incurred for post-production services including visual effects services performed by a qualified independent post-production company, provided that:

(a) at least $500,000 of the qualified digital media content production expenses of the taxpayer are incurred for post-production services including visual effects services performed by a qualified independent post-production company;

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

(c) the taxpayer complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with subsection h. of this section.[1]

c. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business

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

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

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

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

e. A taxpayer, with an application for a tax credit provided for in subsection a. or subsection b. of this section, may apply to the authority and the director for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the tax credit against the tax liability of the taxpayer. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the authority and the director, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or the "Corporation Business Tax Act (1945),"

P.L.1945, c.162 (C.54:10A-1 et seq.), in exchange for private financial assistance to be provided by the purchaser or assignee to the taxpayer that has applied for and been granted the tax credit. The tax credit transfer certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq. that the taxpayer has elected to sell or assign. The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred tax credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq. shall be subject to the same limitations and conditions that apply to the use of a tax credit pursuant to subsections c. and d. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under subsection e. of this section may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 (C.54:10A-1 et seq.) and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection c. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b).

f. (1) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b)[1], and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362),[1] to taxpayers, other than New Jersey studio partners and New Jersey film-lease production companies, shall not exceed a cumulative total of $100,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). In addition to the limitation on the value of tax credits approved by the director for New Jersey film-lease production companies and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey studio partners shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year

2023, in addition to the cumulative total tax credits made available for New Jersey studio partners pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $400,000,000 may be made available annually, in the discretion of the authority, to New Jersey studio partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). In addition to the limitation on the value of tax credits approved by the director for New Jersey studio partners and the limitation on the value of tax credits approved by the director for other taxpayers imposed by this paragraph, and except as provided in section 98 of P.L.2020, c.156 (C.34:1B-362), the value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) to New Jersey film-lease production companies shall not exceed a cumulative total of $100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of $150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. Beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for New Jersey film-lease production companies pursuant to this paragraph and subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362), up to an additional $250,000,000 may be made available annually, in the discretion of the authority, to New Jersey film-lease production companies for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, pursuant to subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L.2020, c.156 (C.34:1B-362). Approvals made to New Jersey studio partners and New Jersey film-lease production companies shall be subject to award agreements with the authority detailing obligations of the awardee and outcomes relating to events of default, including, but not limited to, recapture, forfeiture, and termination. Notwithstanding any provision of this subsection or other law to the contrary, if a film production company designated as a New Jersey studio partner ceases to qualify for its designation as a New Jersey film studio partner and becomes designated as a New Jersey film-lease partner facility, the authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to New Jersey studio partners in each fiscal year and

shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey film-lease production companies in each fiscal year by a corresponding amount pursuant to a formula established in rules adopted by the authority which shall consider the volume of applications submitted by New Jersey studio partners and New Jersey film-lease production facilities, the cumulative total amount of tax credits allowed to New Jersey studio partners and New Jersey film-lease production facilities in the prior fiscal year, the total square footage of facility space occupied in the State by New Jersey studio partners and New Jersey film-lease production facilities, and any other factors that the authority deems appropriate. Award agreements between the authority and New Jersey studio partners shall include a requirement for each New Jersey studio partner to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period. If a New Jersey studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a New Jersey studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a New Jersey studio partner, the authority shall recapture the portion of the tax credit that was only available to the taxpayer by virtue of the taxpayer's designation as a New Jersey studio partner, and all films for which an initial approval has been given, but for which the authority has not approved final documentation, shall terminate. The authority shall establish a non-binding, administrative pre-certification process for potentially eligible projects.

If the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and subsection a. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved to each such category in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval to each such

category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved for New Jersey studio partners, New Jersey film-lease production companies, or taxpayers other than New Jersey studio partners and New Jersey film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) shall not exceed a cumulative total of $30,000,000 in fiscal year 2019 and in each fiscal year thereafter prior to fiscal year 2040 to apply against the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

If the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and have not been allowed a tax credit or tax credit transfer certificate amount for that reason shall [1]**[**be allowed, in the order in which they have submitted an application,**]** have their applications approved by the authority, provided the application otherwise satisfies the requirements of this section, and shall be allowed[1] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b) are not in excess of the amount of credits available.

[1]Beginning in the fiscal year beginning July 1, 2024, in addition to the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), up to an additional $100,000,000 may be made available, in the discretion of the authority for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates,

pursuant to subsection b. of this section and subsection b. of section 1 of P.L.2018, c.56 (C.54:10A-5.39b), from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies pursuant to paragraph (3) of subsection d. of section 98 of P.L.2020, c.156 (C.34:1B-362).[1]

Notwithstanding any provision of this paragraph to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to this paragraph is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the taxpayer is not able to redeem or transfer to another taxpayer under this section, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

g. A taxpayer shall submit to the authority and the director a report prepared by an independent certified public accountant licensed in this State to verify the taxpayer's tax credit claim following the completion of the production. A New Jersey studio partner that makes deferred compensation payments based on work or services provided on a production may file a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. The deferred compensation payments shall constitute qualified film production expenses as if the expenses were incurred at the time of production, provided there are credits available and subject to the authority's review. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the authority and the director, and shall include such information and documentation as shall be determined to be necessary by the authority and the director to substantiate the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. A single report with attachments deemed necessary by the authority shall be submitted electronically. Upon receipt of the report, the authority and the director shall review the findings of the independent certified public accountant's report, and shall make a determination as to the qualified film production expenses or the qualified digital media content production expenses of the taxpayer. The authority's and the director's review shall include, but shall not be limited to: a review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-

payroll digital media content production expense items that are greater than $2,500, but less than $20,000; a review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than $2,500; a review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and a review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The taxpayer's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages. The determination shall be provided in writing to the taxpayer, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

h. A taxpayer shall withhold from each payment to a loan out company, to an independent contractor, or to a homeowner for the use of a personal residence an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and the taxpayer shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the taxpayer withheld. <u>Notwithstanding any provision of this section to the contrary, qualified film production expenses and qualified digital media content production expenses shall include any payments made by the taxpayer</u>

to a loan out company for services performed in New Jersey by individuals who are employees of the loan out company and whose wages and salaries are [1]subject to withholding but[1] not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state.

i. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

"Commitment period" means, for New Jersey studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

(1) in the case of a taxpayer developing or purchasing a production facility, the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner; or

(2) in the case of a taxpayer leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner.

"Digital media content" means [1]**[**any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound, and video content**]** the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video[1]. "Digital media content" shall not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

"Eligibility period" means, with respect to New Jersey studio partners, the period in which a New Jersey studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the

taxpayer's designation as a New Jersey studio partner, beginning the earlier of the commencement of the principal photography for the New Jersey studio partner's initial film in New Jersey or, in the case of a taxpayer developing or purchasing a production facility, at the issuance of a temporary certificate of occupancy for the production facility developed or purchased as a condition of designation as a New Jersey studio partner and, in the case of a taxpayer leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a New Jersey studio partner, and extending thereafter for a term of not more than 10 years.

"Film" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, a game show, award show, talk show, competition or variety show filmed before a live audience, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, sports event, [1][or reality show,][1] a production that solicits funds, a production containing obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes [1], or a reality show, except if the production company has obtained a minimum six episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service[1]. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Full-time or full-time equivalent employee" means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or whose wages are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state, regardless of whether the individual is a resident or nonresident taxpayer, or who is a partner of a taxpayer, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include

an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"Highly compensated individual" means [1], for New Jersey studio partners and New Jersey film-lease production companies,[1] an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services used directly in a production [1]and, for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production[1]. An individual receives compensation indirectly when the taxpayer pays a loan out company that, in turn, pays the individual for the performance of services.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (C.54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160, service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property is used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey [1][or] and[1] the film production company provides to the authority the vendor's information in a form and manner prescribed by the authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey [1], to the extent that the property is located in New Jersey during its use or consumption,[1] if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided the taxpayer has made the withholding required by subsection h. of this section.

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

[1]"Independent post-production company" means a corporation, partnership, limited liability company, or other entity principally

engaged in the provision of post-production, including visual effects services for a film or films described in this section including a film or films that do not satisfy the requirements of subparagraph (a) of paragraph (1) of subsection a. of this section, which entity is not a publicly-traded entity or for which entity no more than five percent of the beneficial ownership is owned directly or indirectly by a publicly-traded entity.[1]

"Loan out company" means [1]: for applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production; and, for applications submitted on or after the effective date of P.L. , c. (pending before the Legislature as this bill),[1] a personal service corporation or other entity [1], authorized to do business in New Jersey,[1] that is contracted with by the taxpayer to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" shall not include entities contracted with by the taxpayer to provide goods or ancillary contractor services such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" means:

(1) (a) a production facility in New Jersey whose owner or developer has made the commitment to build, lease, or operate a production facility of 250,000 square feet or more, including a sound stage and production support space, such as production offices, mill space, or a backlot, for a period of five or more successive years, as evidenced by site plan approval or an executed redevelopment agreement with a governmental entity for the purpose of developing a production facility of 250,000 square feet or more;

(b) a production facility built, leased, or operated by a production company designated as a New Jersey studio partner and which the New Jersey studio partner no longer occupies; or

(c) a portion of a production facility owned by a New Jersey studio partner that is in excess of the space being utilized by the New Jersey studio partner; provided the spaces utilized and unutilized by the New Jersey studio partner both exceed 250,000 square feet.

(2) A film production company that executes at least a 10-year lease for 250,000 square feet or more from a New Jersey film-lease partner facility shall be eligible to be designated as a New Jersey studio partner, provided the film production company otherwise complies with the eligibility requirements of the program.

(3) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner by the authority on or before the 181st day next following the effective date of P.L.2023, c.97 (C.34:1B-4.2 et al.),

in order for a production facility to be designated as a New Jersey film-lease partner facility, the owner or developer shall accept the acquisition by the authority, at the authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the authority and the New Jersey film-lease partner facility. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(4) No more than three New Jersey production facilities may be designated as a New Jersey film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a New Jersey studio partner.

"New Jersey film-lease production company" means a taxpayer, including any taxpayer that is a member of a combined group under section 23 of P.L.2018, c.48 (C.54:10A-4.11) or any other entity in which the film-lease production company has a material ownership interest and material operational role in the production, that otherwise complies with the eligibility requirements of the Film and Digital Media Tax Credit Program and has made a commitment to lease or otherwise occupy production space in a New Jersey film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the project within New Jersey [1]**[**and who will shoot**]** . In addition to the forgoing, if a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, a film production company shall satisfy one of the following two criteria: (1) the film production company shoots[1] at least 50 percent of the total principal photography shoot days within New Jersey at the New Jersey film-lease partner facility [1]; or (2) the qualified film production expenses of the project for all services performed and goods used or consumed at the New Jersey film-lease partner facility and payments made for the use of the New Jersey film-lease partner facility equal or exceed 33 percent of the total qualified film production expenses of the project. In addition to the forgoing, if a New Jersey film-lease partner facility has not yet received a temporary or final certificate of occupancy, a film production company shall have entered into a lease or sublease with the owner or developer of a New Jersey film-lease partner facility, which lease or sublease is for not less than three years of occupancy of the New Jersey film-lease partner facility and includes at least 36,000 square feet of soundstage space, and the film production company shall have executed a contract with the owner or developer of the New Jersey film-lease partner facility to provide production services for films produced by the film production company in New Jersey prior to the New Jersey film-lease partner facility’s receipt of a temporary or final certificate of

occupancy[1]. A "New Jersey film-lease production company" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976" (17 U.S.C. s.101 et seq.).

[1]In the event the authority determines that a New Jersey film-lease production company has failed to meet the qualifications of a New Jersey film-lease production company or otherwise comply with the provisions of this section, the authority may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey film-lease production company.[1]

"New Jersey studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company's designation as a New Jersey studio partner. A "New Jersey studio partner" may include any other member of a taxpayer's combined group, pursuant to P.L.2018, c.131 (C.54:10A-4.11), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New

Jersey studio partner contracts to perform film production services on its behalf [1]or for its benefit[1] such that the designated New Jersey studio partner [1]: (1)[1] controls such film or product during pre-production, production, and post-production[1][, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," (17 U.S.C. s.101 et seq.)] ; or (2) controls distribution rights for the resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred[1]. No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

"Qualified digital media content production expenses" means an expense incurred in New Jersey for the production of digital media content. "Qualified digital media content production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of digital media content that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; [1][and][1] the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment [1]; and the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering[1]. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection h. of this section. [1]["Qualified] For applications submitted prior to the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified[1] digital media content production

expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. [1]For applications submitted after the effective date of P.L. , c. (pending before the Legislature as this bill), "qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media; costs incurred for the design, maintenance, and hosting of websites; or other costs not directly related to the production of digital media content.[1] Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content [1], or any costs included in an application submitted to the authority,[1] shall not be deemed "qualified digital media content production expenses."

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including pre-production costs and post-production costs incurred in New Jersey. "Qualified film production expenses" shall include but not be limited to: the wages and salaries of individuals employed in the production of a film on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due, and any wages and salaries of individuals employed in the production of a film that are not subject to tax under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., due to the provisions of a reciprocity agreement with another state; and the costs for tangible personal property used, and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payment made to a loan out company or to an independent contractor shall not be deemed a "qualified film production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by subsection h. of this section. Payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a "qualified film production expense" unless the taxpayer has made the withholding required by subsection h. of this section. For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by New Jersey studio partners, provided the New Jersey studio partner files a supplemental report prepared by an independent certified public accountant, pursuant to agreed-upon procedures prescribed by the authority and the director, no later than two years after the date on which the production concludes. "Qualified film production expenses" shall not

include: expenses incurred in marketing or advertising a film; [1]⟦and⟧ expenses for a story, script, or scenario to be used for a film; for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies,[1] payment in excess of [1]⟦$500,000⟧ $750,000[1] to a highly compensated individual for [1]⟦costs for a story, script, or scenario used in the production of a film and⟧[1] wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines [1]; and, for New Jersey studio partners and New Jersey film-lease production companies, payment in excess of $500,000 to a highly compensated individual for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[1], except as follows:

(1) for a New Jersey studio partner that incurs less than [1]⟦$50,000,000⟧ $25,000,000[1] in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $18,000,000, 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;

(2) (Deleted by amendment, P.L.2023, c.97)

(3) (Deleted by amendment, P.L.2023, c.97)

(4) for a New Jersey studio partner that incurs [1]⟦$50,000,000⟧ $25,000,000[1] or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $72,000,000, 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;

(5) for a New Jersey film-lease production company that incurs less than $50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed $15,000,000, 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

(6) for a New Jersey film-lease production company that incurs $50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional 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.2023, c.97, s.6)

[1]4. Section 4 of P.L.2018, c.56 is amended to read as follows:

4. a. A taxpayer, upon approval of an application to the authority and the director, shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) or under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.**,** in an amount equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a privilege period or taxable year commencing on or after July 1, 2018 but before July 1, **[**2034**]** 2039, provided that:

(1) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;

(2) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and

(3) the director and the authority have verified that the applicant has met or made good faith efforts in achieving those goals.

b. The amount of a tax credit allowed pursuant to subsection a. of this section shall increase to four percent of the qualified film **[**or digital media content**]** production expenses of the taxpayer if the diversity plan, in addition to meeting the requirements of subsection a. of this section, outlines specific goals that include hiring persons as performers in the film **[**or digital media production**]** who are: (i) women or members of **[**ethnic**]** a minority **[**groups that are underrepresented in film or digital media productions**]** group; (ii) **[**if credited,**]** residents of New Jersey for at least 12 months preceding the beginning of filming or recording **[**,and if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality**]**; and (iii) members of a bona fide labor union representing film and television performers.

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

d. The application shall indicate whether the applicant intends to participate in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to

promote and encourage the training and hiring of New Jersey residents who represent the diversity of the State population.

(cf: P.L.2021, c.367, s.3)[1]

[1][**[**3.**]** 5.[1] This act shall take effect immediately [1][**[**and shall apply retroactively beginning on January 1, 2024 to any taxpayer who has not received a tax credit certificate or tax credit transfer certificate from the New Jersey Economic Development Authority before this date; provided, however, a taxpayer that has received a tax credit certificate and has not used such tax credit certificate before January 1, 2024 shall be allowed to surrender the tax credit certificate to the authority and be issued a new tax credit certificate under the provisions of this act**]**[1].

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4448

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 26, 2024

The Assembly Budget Committee reports favorably and with committee amendments Assembly Bill No. 4448.

As amended and reported, this bill revises certain provisions of the film and digital media content production tax credit program (program) to include eligibility for wages and salaries paid to persons who are not subject to tax under the "New Jersey Gross Income Tax Act" due to a tax reciprocity agreement with another state. The bill also makes certain changes to the availability of tax credits under the requirements of the program.

Availability of Certain Unused Aspire and Emerge Tax Credits

This bill amends current law providing that certain unused tax credits authorized for award under the "New Jersey Aspire Program Act" (Aspire) and "Emerge Program Act" (Emerge) are to be made available for the provision of tax credits allowed under the program. Under current law, the unused tax credits are to be made available for tax credits allowed to New Jersey studio partners and New Jersey film-lease production companies. This bill amends the law so that tax credits are also to be made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies that are awarded tax credits under the program, which value is not to exceed $300 million in fiscal year 2025.

Additionally, this bill provides that, of this $300 million, up to $100 million per year may be made available to taxpayers that are New Jersey studio partners and New Jersey film-lease production companies, at the discretion of the New Jersey Economic Development Authority (authority).

Under the bill, taxpayers that have applied for and have not been allowed a tax credit under the program, because the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for the tax period exceeds the amount of tax credits available in that year, are to have their applications approved by the authority, provided the applications otherwise satisfy program requirements. This modifies the requirement under current law that the authority allow tax credits, under these circumstances, in the order in which the taxpayers submitted applications.

Eligibility Modifications

Among other requirements under current law: (1) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are to be incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey; or (2) the qualified film production expenses of the taxpayer during the tax period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, are to exceed $1 million per production. The bill requires that both conditions be met for reality shows.

In addition, the bill provides that for the purposes of calculating a taxpayer's total digital media content production expenses in New Jersey, for any application submitted on or after the effective date of this bill, qualified wage and salary payments made to full-time employees working on digital media are not to be deemed an expense incurred for services performed. Under certain conditions, a taxpayer may be allowed a tax credit in an amount equal to: (1) 40 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner; or (2) 35 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed by a qualified independent post-production company.

State Income Tax Reciprocity

Under the program, the authority awards corporation business tax credits and gross income tax credits to eligible taxpayers based on the qualified film production expenses or qualified digital media content production expenses incurred for use within certain parts of the State. In addition to certain other eligibility requirements, at least 50 percent of the qualified digital media content production expenses incurred by a taxpayer are required to be for wages and salaries paid to full-time or full-time equivalent employees in New Jersey in order to qualify for the digital media content production tax credit.

Under current law, the terms "qualified film production expenses" and "qualified digital media content production expenses" are defined to include, among other expenses, the wages and salaries paid to individuals who are employed for the purposes of the production and who are subject to the tax imposed by the "New Jersey Gross Income Tax Act." Current law also defines the term "full-time or full-time equivalent employee" to include persons working not less than 35 hours per week, or any other standard of service accepted by custom or practice as full-time or full-time equivalent employment, and whose wages and salaries are subject to withholding as provided in the "New Jersey Gross Income Tax Act."

This bill expands the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries that are paid to individuals who are employed for the purposes of the production and who are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state. The bill also provides that these expenses include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Additionally, the bill amends the definition of "full-time or full-time equivalent employee" to include otherwise eligible persons whose wages and salaries are not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state.

Currently, the State has entered into a reciprocal income tax agreement with the Commonwealth of Pennsylvania. Under the terms of this agreement, compensation paid to Pennsylvania residents who are employed in New Jersey is not subject to tax under the "New Jersey Gross Income Tax Act." Accordingly, the bill provides that wages and salaries paid to certain Pennsylvania residents may be included as qualified film production expenses and qualified digital media content production expenses, provided that these persons are employed in New Jersey for the purposes of the film or digital media content production.

Modification of Definitions

The bill amends the definition of "digital media content" to mean the following digitally formatted and distributed content, which content includes data or information created in analog form but reformatted in digital form: animation; video games; visual effects; interactive media, including virtual, augmented, or mixed reality; content containing text, graphics, or photographs; sound; and video.

The bill amends the definition of "film" to include certain reality shows if the production company has obtained a minimum six episode order from, and is commissioned and scheduled to premiere on, a major linear network or streaming service. Under current law, a reality show is included in the definition of "film" if the production company of the reality show leases or otherwise occupies a production facility of a certain size for a certain period of time and invests a certain amount of money in the facility within a designated enterprise zone or UEZ-impacted business district.

The bill amends the definition of "highly compensated individual" to mean: (1) for New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $500,000 for the performance of services

used directly in a production; and (2) for taxpayers other than New Jersey studio partners and New Jersey film-lease production companies, an individual who directly or indirectly receives compensation in excess of $750,000 for the performance of services used directly in a production.

The bill amends the definition of "incurred in New Jersey" to provide that, under certain conditions, if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey, to the extent that the property is located in New Jersey during its use or consumption.

The bill amends the definition of "loan out company" to require, for applications submitted on or after the bill's effective date, the personal service corporation or entity operating as a "loan out company" to be authorized to do business in New Jersey. The bill adds that for applications submitted prior to the bill's effective date, a "loan out company" means a personal service corporation or other entity with which a taxpayer contracts for the provision of specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production.

The bill amends the definition of "New Jersey film-lease production company" to require that, when a New Jersey film-lease partner facility has received a temporary or final certificate of occupancy, either: (1) 50 percent of a project's total principal photography shoot days within New Jersey be shot at the New Jersey film-lease partner facility; or (2) 33 percent of the total qualified film production expenses of the project are incurred at the New Jersey film-lease partner facility. The bill provides additional requirements if a New Jersey film-lease partner facility has not yet received a certificate of occupancy. If the authority determines that an entity has failed to meet the qualifications of a New Jersey film-lease production company or is out of compliance, the bill authorizes the authority to recapture the portion of any tax credit awarded that had only been available by virtue of the entity's status as a New Jersey film-lease production company.

The bill amends the definition of "New Jersey studio partner" to include an entity that controls distribution rights for a resulting film or other commercial audiovisual product, provided that the New Jersey studio partner contracted with the unrelated entity prior to qualified film production expenses being incurred. The bill also removes a requirement under current law that certain entities, in order to be considered New Jersey studio partners, are required to hold the copyright to certain works made for hire.

The bill amends the definition of "qualified digital media content production expenses" to include the costs for post-production, including, but not limited to: editing, sound design, visual effects, animation, music composition, color grading, and mastering. The bill adds that the definition also includes wages and salaries paid or due, which are not subject to gross income tax due to reciprocity agreements

with other states. In addition, the bill excludes costs included in an application submitted to the authority from this term and provides certain other exclusions based upon whether an application was submitted before or after the bill's effective date.

The bill also amends the definition of "qualified film production expenses" to conform with the provisions of the bill that provide for the treatment of wages and salaries not subject to gross income tax due to tax reciprocity agreements with other states.

Finally, as amended, this bill adds the definition of "independent post-production company" to mean a corporation, partnership, limited liability company, or other entity principally engaged in the provision of post-production, including visual effects services for a film or films, which entity does not meet certain criteria listed in the bill.

Tax Credit Eligibility and Diversity Plan

Under current law, a taxpayer whose application is accompanied by a diversity plan may be approved for a tax credit equal to two percent of the qualified film production expenses or the digital media content production expenses of the taxpayer during a tax period commencing on or after July 1, 2018 but before July 1, 2034. This bill extends this period to before July 1, 2039 and increases the allowed tax credit percentage for digital media content production expenses from two percent to four percent.

Current law permits an increase in the percentage of tax credits allowed to four percent of qualified film production expenses or digital media content production expenses, provided that a diversity plan meets certain conditions. Pursuant to the bill, the conditions upon an increase to four percent are relevant only to qualified film production expenses.

To be eligible for such an increase in tax credit, under current law, a taxpayer is to include specific goals within a diversity plan that include hiring persons as performers who are: (1) members of ethnic minority groups that are underrepresented in film or digital media productions; (2) if credited, residents of New Jersey for at least 12 months preceding the beginning of filming or recording and, if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality; and (3) members of a bona fide labor union representing film and television performers.

This bill amends these categories to include persons who are: (1) women or members of a minority group; (2) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and (3) members of a bona fide labor union representing film and television performers.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) provide that qualified film production expenses and qualified digital media content production expenses include any payments made by the taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the "New Jersey Gross Income Tax Act" due to the provisions of a tax reciprocity agreement with another state. Previously, the bill provided for inclusion of such wages and salaries when not subject to the gross income tax without clarification as to withholding status on those wages and salaries;

(2) require that for reality shows to qualify under the program, at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer are incurred for services performed, and goods purchased through vendors authorized to do business, in New Jersey, and the qualified film production expenses of the taxpayer during the privilege period for services performed, and goods purchased through vendors authorized to do business in New Jersey, exceed $1 million per production;

(3) provide that for purposes of calculating a taxpayer's total digital media content production expenses in New Jersey, for any application submitted on or after the effective date of this bill, qualified wage and salary payments made to full-time employees working on digital media are not to be deemed an expense incurred for services performed;

(4) provide that certain taxpayers may be allowed a tax credit in an amount equal to 40 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed at a New Jersey film-lease production facility or are incurred by a New Jersey studio partner;

(5) provide that certain taxpayers may be allowed a tax credit in an amount equal to 35 percent of the qualified digital media content production expenses that are incurred by a taxpayer during a tax period for post-production services including visual effects services performed by a qualified independent post-production company;

(6) provide that taxpayers that have applied for and have not been allowed a tax credit under the program, because the total amount of tax credits and tax credit transfer certificates allowed to taxpayers for the tax period exceeds the amount of tax credits available in that year, are to have their applications approved by the authority, provided the applications otherwise satisfy program requirements. This modifies the requirement under current law that the authority allow tax credits, under these circumstances, in the order in which the taxpayers submitted applications;

(7) provide that certain unused tax credits authorized for award under Aspire and Emerge are to be made available for tax credits allowed under the program to taxpayers other than New Jersey studio

partners and New Jersey film-lease production companies, which value is not to exceed $300 million in fiscal year 2025;

(8) provide that, beginning in fiscal year 2025, up to an additional $100 million from the funds made available to taxpayers other than New Jersey studio partners and New Jersey film-lease production companies may be made available from unused tax credits authorized for award under Aspire and Emerge, at the authority's discretion, for tax credits allowed under the program to New Jersey studio partners and New Jersey film-lease production companies;

(9) amend the definitions of the following terms for purposes of the program: "digital media content," "film," "highly compensated individual," "incurred in New Jersey," "loan out company," "New Jersey film-lease production company," "New Jersey studio partner," "qualified digital media content production expenses," and "qualified film production expenses";

(10) add the definition for "independent post-production company";

(11) provide that a taxpayer whose application is accompanied by a diversity plan may be approved for a tax credit equal to two percent of the qualified film production expenses or four percent of the digital media content production expenses of the taxpayer during a tax period commencing on or after July 1, 2018 but before July 1, 2039. The amendments extend the availability period for this incentive from the current provision ending the period before July 1, 2034. The amendments also increase the allowed tax credit percentage for digital media content production expenses from two percent to four percent, removing the requirement for a diversity plan to meet certain conditions in order for a taxpayer to be allowed a tax credit equal to four percent of the taxpayer's digital media content production expenses;

(12) require that a taxpayer include specific goals in a diversity plan, to qualify for a tax credit equal to four percent of the qualified film production expenses, that include hiring persons as performers who are: (1) women or members of a minority group; (2) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and (3) members of a bona fide labor union representing film and television performers;

(13) remove a provision for certain retroactive applicability of the bill;

(14) update the title and synopsis to reflect changes to the bill; and

(15) make technical changes to the bill.

FISCAL IMPACT:

Fiscal information for this bill is currently unavailable.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4448

STATE OF NEW JERSEY
221st LEGISLATURE

DATED: JULY 3, 2024

SUMMARY

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

Type of Impact: Annual State revenue decrease to the General Fund and Property Tax Relief Fund.

Agencies Affected: New Jersey Economic Development Authority. Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	FY 2024	FY 2025 through FY 2039
Direct State Revenue Loss	No Impact	Indeterminate

- The Office of Legislative Services (OLS) determines that the bill will have an indeterminate impact on State revenues. While expanding the film and digital media content production tax credit program to include certain wages paid to nonresident employees as qualified expenses will likely decrease revenues, other changes such as reallocating unused tax credits from other programs to the film tax credit program and modifying certain eligibility criteria may increase or decrease revenue losses depending on taxpayer behavior. The amount of the State revenue loss is indeterminate and will depend on the number of taxpayers claiming the enhanced tax credits and the proportion of their qualified expenses attributable to compensation paid to employees not subject to New Jersey gross income tax due to reciprocity agreements with other states.

- The magnitude of the revenue impact will depend on several factors, including the number of taxpayers claiming the enhanced tax credits, the proportion of their qualified expenses attributable to compensation paid to employees not subject to New Jersey gross income tax due to reciprocity agreements, the amount of unused tax credits from other incentive programs that are reallocated to the film tax credit program, and the extent to which taxpayers modify their activities in response to the bill's provisions.

- By allowing wages paid to certain out-of-state residents, such as Pennsylvania residents employed in New Jersey, to be included as qualified expenses, the bill will likely increase the

total amount of tax credits awarded to taxpayers that employ these individuals in the production of films or digital media content in the State.

BILL DESCRIPTION

This bill amends certain provisions of law governing the Film and Digital Media Tax Credit Program to expand the scope of qualified film production expenses and qualified digital media content production expenses to include wages and salaries paid to nonresident employees who are not subject to New Jersey gross income tax due to a reciprocity agreement with another state, such as Pennsylvania. The bill provides that these expenses would include payments made by a taxpayer to a loan out company for services performed in New Jersey by individuals who are employed by the loan out company and whose wages and salaries are subject to withholding but not subject to tax under the New Jersey Gross Income Tax Act due to the provisions of a tax reciprocity agreement with another state. Additionally, the bill amends the definition of "full-time or full-time equivalent employee" under the tax credit program to include otherwise eligible individuals whose wages and salaries are not subject to tax under the New Jersey Gross Income Tax Act due to the provisions of a tax reciprocity agreement with another state.

The bill also makes several other changes to the Film and Digital Media Tax Credit Program. It allows unused tax credits from the Aspire and Emerge programs to be made available for the provision of film tax credits to a broader range of taxpayers, subject to certain limitations. The bill modifies eligibility requirements for reality shows and the calculation of digital media content production expenses. It allows certain digital media content production expenses incurred for post-production services to qualify for enhanced tax credit percentages.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that the bill will have an indeterminate impact on State revenues. Expanding the tax credit program to allow wages paid to certain nonresident employees, particularly Pennsylvania residents, to be included as qualified film and digital media content production expenses will likely increase the total amount of expenses that are eligible for tax credits. This change would result in larger tax credit amounts being awarded, leading to greater revenue losses, holding all other factors constant.

The OLS notes that, under the bill, unused tax credits from the Aspire and Emerge programs are to be made available for taxpayers receiving credits under the film tax credit program, subject to certain limitations. The bill also makes various modifications to the definitions and eligibility criteria under the film tax credit program, which could affect taxpayer behavior and the types of expenses that qualify. Depending on how taxpayers respond, these changes may serve to increase or decrease the amount of credits awarded.

Therefore, the net effect of the bill on State revenues is uncertain, as it will depend on the interactions between the expansion of eligible expenses, the reallocation of unused credits from other programs, and taxpayer response to the modified program requirements. More information

would be needed on the potential credit amounts involved and taxpayer behavior to quantify the revenue impact with greater certainty.

Section:	*Revenue, Finance, and Appropriations*
Analyst:	*Patrick Walsh* *Assistant Fiscal Analyst*
Approved:	*Thomas Koenig* *Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Takes Action on Legislation

07/10/2024

TRENTON – Today, Governor Murphy signed the following bills into law:

S-2792/A-3697 (Cruz-Perez, Turner/Spearman, Park, Simmons) - Appropriates $500,000 from constitutionally dedicated CBT revenues and "2009 Farmland Preservation Fund" to State Agriculture Development Committee for municipal planning incentive grants for farmland preservation purposes

S-2793/A-3698 (Cruz-Perez, Turner/Reynolds-Jackson, Fantasia, Stanley) - Appropriates $1.723 million from constitutionally dedicated CBT revenues and "2009 Farmland Preservation Fund" to State Agriculture Development Committee for grants to certain nonprofit organizations for farmland preservation purposes

S-2825/A-3906 (Gopal/Peterpaul, Donlon, Flynn) - Removes time limitation on issuance of additional alcoholic beverage licenses within boundaries of former federal military installations

S-3192/A-4454 (Diegnan, Moriarty/Freiman, Pintor Marin, DiMaio) - "Real Estate Consumer Protection Enhancement Act"

S-3275/A-4448 (Gopal, McKeon/Donlon, Pintor Marin, Wimberly) - Revises various provisions of film and digital media content production tax credit program

S-3371/A-4457 (Pou, Singer/Freiman) - Revises limits for net cash surrender and net cash withdrawal values for certain annuity policies and contracts from $100,000 to $250,000

S-3384/A-4426 (Burzichelli, Schepisi/Katz, Atkins, Drulis) - Appropriates funds to DEP for environmental infrastructure projects for FY2025

S-3385/A-4602 (Singleton/Lopez) - Concerns deadline for municipality to report certain non-residential development fee information

S-3474/A-4570 (Greenstein/Carter, Speight, Wimberly) - Appropriates $10,067,905 to DEP from constitutionally dedicated CBT revenues for grants to certain nonprofit entities to acquire or develop lands for recreation and conservation purposes, and for certain administrative expenses

A-1677/S-3263 (Lampitt, Bagolie, Stanley/Diegnan, Turner) - Authorizes extended terms for lease and purchase contracts for electric school buses; permits New Jersey School Boards Association to serve as government aggregator to obtain energy services for local units

A-3772/S-2334 (McCann Stamato, Sampson, Lopez/Stack, McKnight) - Revises process for property tax lien holder to foreclose right to redeem property tax lien; allows property owner to protect remaining equity

A-4046/S-3303 (Pintor Marin, Spearman/Pou, Mukherji) - Extends certain accommodations for businesses participating in State economic development programs

A-4425/S-3383 (Ramirez, Spearman, Atkins/Gopal, Mukherji) - Authorizes NJ Infrastructure Bank to expend certain sums to make loans for environmental infrastructure projects for FY2025

A-4458/S-3342 (Sumter, Sampson/Greenstein, Sarlo) - Establishes exemptions and revises implementation timeline for requirement that newly constructed townhouses be installed with automatic fire sprinkler system

A-4478/S-3367 (Calabrese, Karabinchak, Wimberly/Burzichelli) - Authorizes NJ Infrastructure Bank to expend certain sums to make loans for transportation infrastructure projects for FY2025; makes appropriation

A-4572/S-3473 (Donlon, Sumter, Drulis/McKeon, Space) - Appropriates $101,696,535 from constitutionally dedicated CBT revenues to DEP for local government open space acquisition and park development projects, and for certain administrative expenses

A-4581/S-3471 (Haider, Sampson, Tully/Mukherji, O'Scanlon) - Authorizes NJ Infrastructure Bank to expend certain sums to make loans for Community Hazard Assistance Mitigation Program projects for FY 2025

A-4587/S-3451 (Stanley/Cryan, Pou) - Increases hours required for individual to obtain licensure as teacher in cosmetology and hairstyling or as massage and bodywork therapist