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IS 5/28/08

P.L. 2007, CHAPTER 257, *approved January 11, 2008*
Senate, No. 2526 (*Second Reprint*)

1 AN ACT providing a corporation business tax credit for certain
2 digital media content expenses and concerning the film
3 production expenses credit, amending P.L.2005, c.345.
4

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

7
8 1. Section 1 of P.L.2005, c.345 (C.54:10A-5.39) is amended to
9 read as follows:

10 1. a. A taxpayer, upon application to the Director of the Division
11 of Taxation in the Department of the Treasury and the New Jersey
12 Economic Development Authority, shall be allowed a credit against
13 the tax imposed pursuant to section 5 of P.L.1945, c.162
14 (C.54:10A-5), in an amount equal to 20 percent of the qualified film
15 production expenses of the taxpayer during a privilege period
16 commencing after the effective date of P.L.2005, c.345, provided
17 that (1) at least **[60]** ²**[50]** 60² percent of the total film production
18 expenses, exclusive of post-production costs, of the taxpayer will be
19 incurred for services performed and goods used or consumed in
20 New Jersey, and (2) principal photography of the film commences
21 within 150 days after the approval of the application for the credit.

22 b. A taxpayer, upon application to the Director of the Division
23 of Taxation in the Department of the Treasury and the New Jersey
24 Economic Development Authority, shall be allowed a credit against
25 the tax imposed pursuant to section 5 of P.L.1945, c.162
26 (C.54:10A-5), in an amount ²**[equal to]** up to² 20 percent ², as
27 determined by the authority² of the qualified digital media content
28 production expenses of the taxpayer during a privilege period
29 commencing after the effective date of P.L. , c. ¹**[,]**¹(pending
30 before the Legislature as this bill), provided that at least \$2,000,000
31 of the total digital media content production expenses of the
32 taxpayer will be incurred for services performed and goods used or
33 consumed in New Jersey ²and at least a significant percentage, as
34 determined by the authority, of the qualified digital media content
35 production expenses of the taxpayer will include wages and salaries
36 paid to one or more new full-time employees in New Jersey. For
37 purposes of this subsection, "new full-time employee" means a
38 person employed by the taxpayer for consideration for at least 35
39 hours a week, or who renders any other standard of service
40 generally accepted by custom or practice as full-time employment,
41 whose wages are subject to withholding as provided in the "New
42 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a
43 partner of a taxpayer that is an eligible partnership, who works for

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted May 24, 2007.

²Senate amendments adopted in accordance with Governor's recommendations December 10, 2007.

1 the partnership for at least 35 hours a week, or who renders any
2 other standard of service generally accepted by custom or practice
3 as full-time employment, and whose distributive share of income,
4 gain, loss, or deduction, or whose guaranteed payments, or any
5 combination thereof, is subject to the payment of estimated taxes, as
6 provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1
7 et seq., and who is determined by the authority to work in a newly
8 created permanent position according to criteria it develops. “New
9 full-time employee” shall not include any person who works as an
10 independent contractor or on a consulting basis for the taxpayer. In
11 determining the amount of any grant of tax credits made pursuant to
12 this subsection, the authority shall consider the number of new full-
13 time positions created by the taxpayer as well as the quality of the
14 full-time positions created, including but not limited to the salaries
15 and benefits provided to new full-time employees. The authority, in
16 consultation with the Division of Taxation, shall establish rules for
17 the recapture of all, or a portion of, the grant of tax credits pursuant
18 to this subsection in the event the taxpayer fails to maintain the
19 new full-time positions that were included in calculating the
20 qualified digital media content production expenses of the
21 taxpayer².

22 c. The amount of the credit applied under this section against the
23 tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege
24 period, when taken together with any other credits allowed against
25 the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not
26 exceed 50 percent of the tax liability otherwise due and shall not
27 reduce the tax liability to an amount less than the statutory
28 minimum provided in subsection (e) of section 5 of P.L.1945,
29 c.162. The priority in which credits allowed pursuant to this section
30 and any other credits shall be taken shall be as determined by the
31 Director of the Division of Taxation. The amount of the credit
32 otherwise allowable under this section which cannot be applied for
33 the privilege period due to the limitations of this subsection or
34 under other provisions of P.L.1945, c.162 may be carried over, if
35 necessary, to the seven privilege periods following the privilege
36 period for which the credit was allowed.

37 [c.] d. A taxpayer may, with an application for a credit
38 provided for in subsection a. ²or subsection b.² of this section,
39 apply to the director and the executive director of the authority for a
40 tax credit transfer certificate in lieu of the taxpayer being allowed
41 any amount of the credit against the tax liability of the taxpayer.
42 The director and the executive director of the authority may consult
43 with the New Jersey Motion Picture and Television Development
44 Commission in consideration of any application for approval of a
45 tax credit or tax credit transfer certificate under this section. The
46 tax credit transfer certificate, upon receipt thereof by the taxpayer
47 from the director and the authority, may be sold or assigned, in full
48 or in part, to any other taxpayer that may have a tax liability under

1 P.L.1945, c.162 or N.J.S.54A:1-1 et seq., in exchange for private
2 financial assistance to be provided by the purchaser or assignee to
3 the taxpayer that has applied for and been granted the credit. The
4 certificate provided to the taxpayer shall include a statement
5 waiving the taxpayer's right to claim that amount of the credit
6 against the tax imposed pursuant to section 5 of P.L.1945, c.162
7 (C.54:10A-5) that the taxpayer has elected to sell or assign. The
8 sale or assignment of any amount of a tax credit transfer certificate
9 allowed under this section shall not be exchanged for consideration
10 received by the taxpayer of less than 75% of the transferred credit
11 amount. Any amount of a tax credit transfer certificate used by a
12 purchaser or assignee against a tax liability under P.L.1945, c.162
13 shall be subject to the same limitations and conditions that apply to
14 the use of a credit pursuant to subsection ²[b.] c.² of this section.
15 Any amount of a tax credit transfer certificate obtained by a
16 purchaser or assignee under ²subsection a. of² this section may be
17 applied against the purchaser's or assignee's tax liability under
18 N.J.S.54A:1-1 et seq. and shall be subject to the same limitations
19 and conditions that apply to the use of a credit pursuant to section 2
20 of P.L.2005, c.345 (C.54A:4-12).

21 [d.] e. As used in this section:

22 "Digital media content" means any data or information that is
23 '[intended for consumption over the Internet and is]' produced in
24 digital form, including data or information created in analog form
25 but reformatted in digital form, text, graphics, photographs,
26 animation, sound and video content. "Digital media content" does
27 not mean content offerings generated by the end user (including
28 postings on electronic bulletin boards and chat rooms); content
29 offerings comprised primarily of local news, events, weather or
30 local market reports¹[.];¹ public service content; electronic
31 commerce platforms (such as retail and wholesale websites);
32 websites or content offerings that contain obscene material as
33 defined pursuant to ¹[P.L.1978, c.95 (C.2C:34-2 and C.2C:34-3)]
34 N.J.S.2C:34-2 and N.J.S.2C:34-3¹; websites or content that are
35 produced or maintained primarily for private, industrial, corporate
36 or institutional purposes; or digital media content acquired or
37 licensed by the taxpayer for distribution or incorporation into
38 taxpayer's digital media content.

39 "Film" means a feature film, a television series or a television
40 show of 15 minutes or more in length, intended for a national
41 audience. "Film" shall not include a production featuring news,
42 current events, weather and market reports or public programming,
43 talk show, game show, sports event, award show or other gala
44 event, a production that solicits funds, a production containing
45 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
46 3, or a production primarily for private, industrial, corporate or
47 institutional purposes.

1 “Qualified digital media content production expenses” means an
2 expense incurred in New Jersey for the production of digital media
3 content. Qualified digital media content production expenses shall
4 include but shall not be limited to wages and salaries of individuals
5 employed in the production of digital media content on which the
6 tax imposed by the "New Jersey Gross Income Tax Act,"
7 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer
8 software and hardware, data processing, visualization technologies,
9 sound synchronization, editing, and the rental of facilities and
10 equipment. Qualified digital media content production expenses
11 shall not include expenses incurred in marketing, promotion or
12 advertising digital media or other costs not directly related to the
13 production of digital media content. Costs related to the acquisition
14 or licensing of digital media content by the taxpayer for distribution
15 or incorporation into 'the' taxpayer's digital media content shall not
16 be 'qualified' digital media content production expenses.

17 "Qualified film production expenses" means an expense incurred
18 in New Jersey for the production of a film including post-
19 production costs incurred in New Jersey. Qualified film production
20 expenses shall include but shall not be limited to wages and salaries
21 of individuals employed in the production of a film on which the
22 tax imposed by the "New Jersey Gross Income Tax Act,"
23 N.J.S.54A:1-1 et seq. has been paid or **[are]** is due; the costs of
24 construction, operations, editing, photography, sound
25 synchronization, lighting, wardrobe and accessories and the cost of
26 rental of facilities and equipment. Qualified film production
27 expenses shall not include expenses incurred in marketing or
28 advertising a film.

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

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

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

39 **[e.] f.** The Director of the Division of Taxation in the
40 Department of the Treasury, in consultation with the New Jersey
41 Motion Picture and Television Development Commission and the
42 New Jersey Economic Development Authority, shall adopt rules in
43 accordance with the "Administrative Procedure Act," P.L.1968,
44 c.410 (C.52:14B-1 et seq.), as are necessary to implement this act
45 including examples of qualified film production and digital media
46 content production expenses and the procedures and forms to apply
47 for a credit and for a tax credit transfer certificate necessary for a
48 taxpayer to sell or assign an amount of tax credit under this section.

1 The value of credits, including tax credits allowed through the
2 granting of tax credit transfer certificates, approved by the director
3 and the authority pursuant to ²subsection a. of² this section and
4 pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12) shall not
5 exceed a cumulative total of ~~[\$10,000,000]~~ ²[\$30,000,000]
6 ~~\$10,000,000~~² in any fiscal year to apply against the tax imposed
7 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax
8 imposed pursuant to the "New Jersey Gross Income Tax Act,"
9 N.J.S.54A:1-1 et seq. If the cumulative total amount of credits and
10 tax credit transfer certificates allowed to taxpayers for privilege
11 periods or taxable years commencing during a single fiscal year
12 under ²subsection a. of² this section and section 2 of P.L.2005,
13 c.345 (C.54A:4-12) exceeds the amount of credits available in that
14 year, then taxpayers who have first applied for and have not been
15 allowed a credit or tax credit transfer certificate amount for that
16 reason shall be allowed, in the order in which they have submitted
17 an application, the amount of tax credit or certificate on the first day
18 of the next succeeding fiscal year in which tax credits and tax credit
19 transfer certificates under ²subsection a. of² this section and section
20 2 of P.L.2005, c.345 (C.54A:4-12) are not in excess of the amount
21 of credits available. ²The value of credits, including tax credits
22 allowed through the granting of tax credit transfer certificates,
23 approved by the director and the authority pursuant to subsection b.
24 of this section shall not exceed a total of \$5,000,000 in any fiscal
25 year to apply against the tax imposed pursuant to section 5 of
26 P.L.1945, c.162 (C.54:10A-5). If the total amount of credits and
27 tax credit transfer certificates allowed to taxpayers for privilege
28 periods or taxable years commencing during a single fiscal year
29 under subsection b. of this section exceeds the amount of credits
30 available in that year, then taxpayers who have first applied for and
31 have not been allowed a credit or tax credit transfer certificate
32 amount for that reason shall be allowed, in the order in which they
33 have submitted an application, the amount of tax credit or
34 certificate on the first day of the next succeeding fiscal year in
35 which tax credit and tax credit transfer certificates under subsection
36 b. of this section are not in excess of the amount of credits
37 available.² The Executive Director of the New Jersey Economic
38 Development Authority, in conjunction with the Director of the
39 Division of Taxation shall prepare and submit a report to the
40 Governor and the Legislature on the effectiveness of the credit as an
41 incentive for encouraging film productions and digital media
42 content productions to locate in New Jersey which shall be
43 completed before the third taxable year or privilege period in which
44 a credit may be claimed.

45 ²g. For the purpose of determining eligibility for or the amount
46 of any grant of tax credits pursuant to this section, the authority
47 shall not include any job that is included in the calculation of a

1 business employment incentive grant pursuant to the provisions of
2 P.L.1996, c.26 (C.34:1B-124 et seq.) or a business retention and
3 relocation grant pursuant to P.L.1996, c.25 (C.34:1B-112 et seq.).²
4 (cf: P.L.2005, c.345, s.1)

5
6 ¹2. Section 2 of P.L.2005, c.345 (C.54A:4-12) is amended to
7 read as follows:

8 2. a. A taxpayer, upon application to the Director of the Division
9 of Taxation in the Department of the Treasury and the New Jersey
10 Economic Development Authority, shall be allowed a credit against
11 the tax otherwise due for the taxable year under the "New Jersey
12 Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal
13 to 20 percent of the qualified film production expenses of the
14 taxpayer during a taxable year commencing after the effective date
15 of P.L.2005, c.345, provided that (1) at least 60 percent of the total
16 production expenses, exclusive of post-production costs, of the
17 taxpayer will be incurred for services performed and goods used or
18 consumed in New Jersey, and (2) principal photography of the film
19 commences within 150 days after the approval of the application for
20 the credit.

21 b. The amount of the credit allowed pursuant to this section
22 shall be applied against the tax otherwise due under N.J.S.54A:1-1
23 et seq. after all other credits and payments. If the credit exceeds the
24 amount of tax otherwise due, that amount of excess shall be an
25 overpayment for the purposes of N.J.S.54A:9-7.

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

1 or assignee against a tax liability under N.J.S.54A:1-1 et seq., shall
2 be subject to the same limitations and conditions that apply to the
3 use of a credit pursuant to subsection b. of this section. Any
4 amount of a tax credit transfer certificate obtained by a purchaser or
5 assignee under this section may be applied against the purchaser's
6 or assignee's tax liability under P.L.1945, c.162 and shall be subject
7 to the same limitations and conditions that apply to the use of a
8 credit pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39).

9 d. A partnership shall not be allowed a credit under this section
10 directly, but the amount of credit or tax credit transfer certificate of
11 a taxpayer in respect of a distributive share of partnership income
12 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
13 seq., shall be determined by allocating to the taxpayer that
14 proportion of the credit or certificate acquired by the partnership
15 that is equal to the taxpayer's share, whether or not distributed, of
16 the total distributive income or gain of the partnership for its
17 taxable year ending within or with the taxpayer's taxable year. For
18 the purposes of subsection b. of this section, the amount of tax
19 liability that would be otherwise due of a taxpayer is that proportion
20 of the total liability of the taxpayer that the taxpayer's share of the
21 partnership income or gain included in gross income bears to the
22 total gross income of the taxpayer. The provisions of subsection c.
23 of this section shall apply to the amount of any credit or certificate
24 of a taxpayer in respect of a distributive share of partnership
25 income.

26 e. As used in this section:

27 "Film" means a feature film, a television series or a television
28 show of 15 minutes or more in length, intended for a national
29 audience. Film shall not include a production featuring news,
30 current events, weather and market reports or public programming,
31 talk show, game show, sports event, award show or other gala
32 event, a production that solicits funds, a production containing
33 obscene material as defined in N.J.S.2C:34-2 and N.J.S.2C:34-3, or
34 a production primarily for private, industrial, corporate or
35 institutional purposes.

36 "Qualified film production expenses" means an expense incurred
37 in New Jersey for the production of a film including post-
38 production costs incurred in New Jersey. Qualified film production
39 expenses shall include but shall not be limited to wages and salaries
40 of individuals employed in the production of a film on which the
41 tax imposed by the "New Jersey Gross Income Tax Act,"
42 N.J.S.54A:1-1 et seq. has been paid or are due; the costs of
43 construction, operations, editing, photography, sound
44 synchronization, lighting, wardrobe and accessories and the cost of
45 rental of facilities and equipment. Qualified film production
46 expenses shall not include expenses incurred in marketing or
47 advertising a film.

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

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

8 f. The Director of the Division of Taxation in the Department
9 of the Treasury, in consultation with the New Jersey Motion Picture
10 and Television Development Commission and the New Jersey
11 Economic Development Authority, shall adopt rules in accordance
12 with the "Administrative Procedure Act," P.L.1968, c.410
13 (C.52:14B-1 et seq.), as are necessary to implement this act
14 including examples of qualified film production expenses and the
15 procedures and forms to apply for a credit and for a tax credit
16 transfer certificate necessary for a taxpayer to sell or assign an
17 amount of tax credit under this section. The amount of credits,
18 including tax credits allowed through the granting of tax credit
19 transfer certificates, approved by the director and the authority
20 pursuant to ²subsection a. of² this section and pursuant to section 1
21 of P.L.2005, c.345 (C.54:10A-5.39) shall not exceed a cumulative
22 total of ~~[\$10,000,000]~~ ²~~[\$30,000,000]~~ \$10,000,000² in any fiscal
23 year to apply against the tax imposed under N.J.S.54A:1-1 et seq.,
24 and the tax imposed pursuant to section 5 of P.L.1945, c.162
25 (C.54:10A-5). If the cumulative total amount of credits and tax
26 credit transfer certificates allowed to taxpayers for taxable years or
27 privilege periods commencing during a single fiscal year under this
28 section ²and subsection a. of² section 1 of P.L.2005, c.345
29 (C.54:10A-5.39) exceeds the amount of credits available in that
30 year, then taxpayers who have first applied for and have not been
31 allowed a credit or tax credit transfer certificate amount for that
32 reason shall be allowed, in the order in which they have submitted
33 an application, the amount of tax credit or certificate on the first day
34 of the next succeeding fiscal year in which tax credits and tax
35 transfer certificates under this section and ²subsection a. of² section
36 1 are not in excess of the amount of credits available. The
37 Executive Director of the New Jersey Economic Development
38 Authority, in conjunction with the Director of the Division of
39 Taxation shall prepare and submit a report to the Governor and the
40 Legislature on the effectiveness of the credit as an incentive for
41 encouraging film productions to locate in New Jersey which shall
42 be completed before the third taxable year or privilege period in
43 which a credit may be claimed.¹

44 (cf: P.L.2005, c.345, s.2)

45

46 ¹[2.] 3.¹ This act shall take effect immediately.

S2526 [2R]

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3

4

5

Provides a corporation business tax credit for certain digital media content expenses and concerning the film production expenses credit, amending P.L.2005, c.345.

SENATE, No. 2526

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED FEBRUARY 5, 2007

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

SYNOPSIS

Provides a corporation business tax credit for certain digital media content expenses and concerning the film production expenses credit, amending P.L.2005, c.345.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/6/2007)

S2526 SARLO, KYRILLOS

2

1 AN ACT providing a corporation business tax credit for certain
2 digital media content expenses and concerning the film
3 production expenses credit, amending P.L.2005, c.345.

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

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8 1. Section 1 of P.L.2005, c.345 (C. 54:10A-5.39) is amended to
9 read as follows:

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11 of Taxation in the Department of the Treasury and the New Jersey
12 Economic Development Authority, shall be allowed a credit against
13 the tax imposed pursuant to section 5 of P.L.1945, c.162
14 (C.54:10A-5), in an amount equal to 20 percent of the qualified film
15 production expenses of the taxpayer during a privilege period
16 commencing after the effective date of P.L.2005, c.345, provided
17 that (1) at least **[60]** 50 percent of the total film production
18 expenses, exclusive of post-production costs, of the taxpayer will be
19 incurred for services performed and goods used or consumed in
20 New Jersey, and (2) principal photography of the film commences
21 within 150 days after the approval of the application for the credit.

22 b. A taxpayer, upon application to the Director of the Division
23 of Taxation in the Department of the Treasury and the New Jersey
24 Economic Development Authority, shall be allowed a credit against
25 the tax imposed pursuant to section 5 of P.L.1945, c.162
26 (C.54:10A-5), in an amount equal to 20 percent of the qualified
27 digital media content production expenses of the taxpayer during a
28 privilege period commencing after the effective date of P.L. , c. ,
29 (pending before the Legislature as this bill), provided that at least
30 \$2,000,000 of the total digital media content production expenses of
31 the taxpayer will be incurred for services performed and goods used
32 or consumed in New Jersey.

33 c. The amount of the credit applied under this section against the
34 tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege
35 period, when taken together with any other credits allowed against
36 the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not
37 exceed 50 percent of the tax liability otherwise due and shall not
38 reduce the tax liability to an amount less than the statutory
39 minimum provided in subsection (e) of section 5 of P.L.1945,
40 c.162. The priority in which credits allowed pursuant to this section
41 and any other credits shall be taken shall be as determined by the
42 Director of the Division of Taxation. The amount of the credit
43 otherwise allowable under this section which cannot be applied for
44 the privilege period due to the limitations of this subsection or
45 under other provisions of P.L.1945, c.162 may be carried over, if

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

Matter underlined thus is new matter.

1 necessary, to the seven privilege periods following the privilege
2 period for which the credit was allowed.

3 **[c.] d.** A taxpayer may, with an application for a credit
4 provided for in subsection a. of this section, apply to the director
5 and the executive director of the authority for a tax credit transfer
6 certificate in lieu of the taxpayer being allowed any amount of the
7 credit against the tax liability of the taxpayer. The director and the
8 executive director of the authority may consult with the New Jersey
9 Motion Picture and Television Development Commission in
10 consideration of any application for approval of a tax credit or tax
11 credit transfer certificate under this section. The tax credit transfer
12 certificate, upon receipt thereof by the taxpayer from the director
13 and the authority, may be sold or assigned, in full or in part, to any
14 other taxpayer that may have a tax liability under P.L.1945, c.162
15 or N.J.S.54A:1-1 et seq., in exchange for private financial
16 assistance to be provided by the purchaser or assignee to the
17 taxpayer that has applied for and been granted the credit. The
18 certificate provided to the taxpayer shall include a statement
19 waiving the taxpayer's right to claim that amount of the credit
20 against the tax imposed pursuant to section 5 of P.L.1945, c.162
21 (C.54:10A-5) that the taxpayer has elected to sell or assign. The
22 sale or assignment of any amount of a tax credit transfer certificate
23 allowed under this section shall not be exchanged for consideration
24 received by the taxpayer of less than 75% of the transferred credit
25 amount. Any amount of a tax credit transfer certificate used by a
26 purchaser or assignee against a tax liability under P.L.1945, c.162
27 shall be subject to the same limitations and conditions that apply to
28 the use of a credit pursuant to subsection b. of this section. Any
29 amount of a tax credit transfer certificate obtained by a purchaser or
30 assignee under this section may be applied against the purchaser's
31 or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be
32 subject to the same limitations and conditions that apply to the use
33 of a credit pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12).

34 **[d.] e.** As used in this section:

35 “Digital media content” means any data or information that is
36 intended for consumption over the Internet and is produced in
37 digital form, including data or information created in analog form
38 but reformatted in digital form, text, graphics, photographs,
39 animation, sound and video content. “Digital media content” does
40 not mean content offerings generated by the end user (including
41 postings on electronic bulletin boards and chat rooms); content
42 offerings comprised primarily of local news, events, weather or
43 local market reports, public service content; electronic commerce
44 platforms (such as retail and wholesale websites); websites or
45 content offerings that contain obscene material as defined pursuant
46 to P.L.1978, c.95 (C.2C:34-2 and C.2C:34-3); websites or content
47 that are produced or maintained primarily for private, industrial,
48 corporate or institutional purposes; or digital media content

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

3 "Film" means a feature film, a television series or a television
4 show of 15 minutes or more in length, intended for a national
5 audience. "Film" shall not include a production featuring news,
6 current events, weather and market reports or public programming,
7 talk show, game show, sports event, award show or other gala
8 event, a production that solicits funds, a production containing
9 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
10 3, or a production primarily for private, industrial, corporate or
11 institutional purposes.

12 "Qualified digital media content production expenses" means an
13 expense incurred in New Jersey for the production of digital media
14 content. Qualified digital media content production expenses shall
15 include but shall not be limited to wages and salaries of individuals
16 employed in the production of digital media content on which the
17 tax imposed by the "New Jersey Gross Income Tax Act,"
18 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer
19 software and hardware, data processing, visualization technologies,
20 sound synchronization, editing, and the rental of facilities and
21 equipment. Qualified digital media content production expenses
22 shall not include expenses incurred in marketing, promotion or
23 advertising digital media or other costs not directly related to the
24 production of digital media content. Costs related to the acquisition
25 or licensing of digital media content by the taxpayer for distribution
26 or incorporation into taxpayer's digital media content shall not be
27 digital media content production expenses.

28 "Qualified film production expenses" means an expense incurred
29 in New Jersey for the production of a film including post-
30 production costs incurred in New Jersey. Qualified film production
31 expenses shall include but shall not be limited to wages and salaries
32 of individuals employed in the production of a film on which the
33 tax imposed by the "New Jersey Gross Income Tax Act,"
34 N.J.S.54A:1-1 et seq. has been paid or **[are]** is due; the costs of
35 construction, operations, editing, photography, sound
36 synchronization, lighting, wardrobe and accessories and the cost of
37 rental of facilities and equipment. Qualified film production
38 expenses shall not include expenses incurred in marketing or
39 advertising a film.

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

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

46 "Post-production costs" means the costs of the phase of
47 production that follows principal photography, in which raw

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

3 **[e.] f.** The Director of the Division of Taxation in the
4 Department of the Treasury, in consultation with the New Jersey
5 Motion Picture and Television Development Commission and the
6 New Jersey Economic Development Authority, shall adopt rules in
7 accordance with the "Administrative Procedure Act," P.L.1968,
8 c.410 (C.52:14B-1 et seq.), as are necessary to implement this act
9 including examples of qualified film production and digital media
10 content production expenses and the procedures and forms to apply
11 for a credit and for a tax credit transfer certificate necessary for a
12 taxpayer to sell or assign an amount of tax credit under this section.
13 The value of credits, including tax credits allowed through the
14 granting of tax credit transfer certificates, approved by the director
15 and the authority pursuant to this section and pursuant to section 2
16 of P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total
17 of **[\$10,000,000] \$30,000,000** in any fiscal year to apply against
18 the tax imposed pursuant to section 5 of P.L.1945, c.162
19 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey
20 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative
21 total amount of credits and tax credit transfer certificates allowed to
22 taxpayers for privilege periods or taxable years commencing during
23 a single fiscal year under this section and section 2 of P.L.2005,
24 c.345 (C.54A:4-12) exceeds the amount of credits available in that
25 year, then taxpayers who have first applied for and have not been
26 allowed a credit or tax credit transfer certificate amount for that
27 reason shall be allowed, in the order in which they have submitted
28 an application, the amount of tax credit or certificate on the first day
29 of the next succeeding fiscal year in which tax credits and tax credit
30 transfer certificates under this section and section 2 of P.L.2005,
31 c.345 (C.54A:4-12) are not in excess of the amount of credits
32 available. The Executive Director of the New Jersey Economic
33 Development Authority, in conjunction with the Director of the
34 Division of Taxation shall prepare and submit a report to the
35 Governor and the Legislature on the effectiveness of the credit as an
36 incentive for encouraging film productions and digital media
37 content productions to locate in New Jersey which shall be
38 completed before the third taxable year or privilege period in which
39 a credit may be claimed.

40 (cf: P.L.2005, c.345, s.1)

41

42 2. This act shall take effect immediately.

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44

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STATEMENT

46

47 This bill provides a tax credit to businesses under the corporation
48 business tax for certain digital media content production expenses

S2526 SARLO, KYRILLOS

6

1 incurred in New Jersey. A tax credit will be allowed in an amount
2 equal to 20 percent of the expenses incurred in New Jersey in the
3 production of digital media that is created for public Internet
4 display.

5 To be eligible for the creditable costs, at least \$2 million of the
6 total production expenses must be incurred in New Jersey.
7 Expenses that are eligible for a credit include wages and salaries,
8 actual production costs, and rental costs of facilities and equipment,
9 if incurred in New Jersey.

10 Similar tax credits for film production were established in 2006
11 to provide incentives for media production in New Jersey. This bill
12 broadens the credit program to include digital media. The credit
13 will be administered in the same manner as the film credit. As with
14 the film credit, bill requires the Executive Director of the Economic
15 Development Authority and the Director of the Division of
16 Taxation to report to the Governor and the Legislature regarding the
17 effectiveness of the credit as an incentive for encouraging film
18 productions to locate in New Jersey.

19 The current corporation business tax credit for film productions
20 is limited to \$10,000,000 per taxpayer for a fiscal year. This bill
21 raises the \$10,000,000 limit to \$30,000,000 to cover both film and
22 digital media content production.

23 Finally, the bill changes the calculation of the credit for film
24 production expenses by lowering the threshold percentage of total
25 production income that must be incurred in New Jersey from 60%
26 to 50%.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2526

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 24, 2007

The Senate Budget and Appropriations Committee reports favorably, with committee amendments, Senate Bill No. 2526.

This bill, as amended, creates a corporation business tax credit for certain digital media content production expenses in New Jersey, broadens eligibility for the corporation business tax credit for film production and increases the annual cumulative cap on corporation business tax credits for film and digital media production and the gross income credit for film production.

The tax credits for film production were established in 2006 to provide incentives for media production in New Jersey. This bill adds digital media to the corporation business credit program. The credit will be administered in the same manner as the film credit. As with the film credit, the bill requires the Executive Director of the Economic Development Authority and the Director of the Division of Taxation to report to the Governor and the Legislature regarding the effectiveness of the credit as an incentive for encouraging digital media productions to locate in New Jersey.

To be eligible for the credit, at least \$2 million of the total production expenses must be incurred in New Jersey. Expenses that are eligible for a credit include wages and salaries, actual production costs, and rental costs of facilities and equipment, if incurred in New Jersey.

The bill also broadens the eligibility criterion for the corporation business credit for film production by lowering the threshold percentage of total production expenses that must be incurred in New Jersey from 60% to 50%.

The current cumulative corporation business tax and gross income tax credit limit for film productions is \$10,000,000 for a fiscal year. This bill raises the \$10,000,000 limit to \$30,000,000 to include the corporation business tax credits for film and digital media production and the gross income credit for film production.

COMMITTEE AMENDMENTS:

The committee amendments change the definition of digital media content to remove the requirement that such digital data or information be intended for consumption over the Internet.

The amendments also make minor technical changes to the bill, including the addition of a new section amending the gross income tax credit for film production to mirror the change to the corporation business tax credit raising the annual cumulative credit limit.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that tax credits allowed under this bill would routinely reach the new \$30 million ceiling. The current annual \$10 million cap for the film production tax credit has been reached in the two years since its creation and a backlog of credit applications exists.

This bill would produce an annual State revenue loss of \$20 million from fiscal year 2008 through fiscal year 2015. No further cost is projected, as the underlying statute does not allow for the approval of tax credits after June 30, 2015.

The OLS cannot project the value of the offsetting positive economic and fiscal effects that might result from this legislation. The OLS notes that the bill would only generate an economic and fiscal benefit to the State with regards to film and digital media productions that would not have occurred without the tax credit.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2526

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JUNE 14, 2007

SUMMARY

- Synopsis:** Provides a corporation business tax credit for certain digital media content expenses and concerning the film production expenses credit, amending P.L.2005, c.345.
- Type of Impact:** Annual Foregone General Fund and Property Tax Relief Fund Revenue and Indeterminate Annual State Revenue Gain through Fiscal Year 2015.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2008 through Fiscal Year 2015</u>
State Revenue Loss	\$20,000,000 per Fiscal Year
State Revenue Gain	Indeterminate - See Comments Below

- Consistent with an expectation by the New Jersey Motion Picture and Television Commission, the Office of Legislative Services (OLS) anticipates that tax credits allowed under this bill would routinely reach the new \$30 million ceiling. The commission informed the OLS that the existing annual \$10 million cap for the film production tax credit had been reached in the two years since creation and that a backlog of credit applications existed. The film and television production industry had \$85.5 million in New Jersey production expenses in 2005, of which an estimated 70 percent (or \$60 million) might have been eligible for the tax credit.
- The OLS cannot project the value of the offsetting positive economic and fiscal effects that might result from this legislation. Regardless, the OLS notes that the bill would only generate an economic and fiscal benefit to the State with regards to film and digital media productions that would not have occurred without the tax credit.

BILL DESCRIPTION

Senate Bill No. 2526 (1R) of 2007 raises the annual cap on the total amount of film production tax credits from \$10 million to \$30 million and extends the credit to qualified digital

media productions. Credit recipients may sell their credits to other taxpayers and no credit may be issued after June 30, 2015. The bill also lowers the *film* credit's eligibility requirement that 60 percent of total *film* production expenses must be incurred in New Jersey to 50 percent.

The bill provides a tax credit against corporate business tax liabilities to businesses in an amount equal to 20 percent of the expenses they incur in New Jersey in the production of qualified *digital* media content. To be eligible for the creditable costs, at least \$2 million of the total *digital* media production expenses must be incurred in New Jersey.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill would produce an annual State revenue loss of \$20 million from fiscal year 2008 through fiscal year 2015, after which the agency projects no further cost, as the underlying statute does not allow for the approval of tax credits after June 30, 2015. This estimate assumes that the year for which a tax credit would be granted to a business would be the year in which the business would either apply the full credit amount against its tax liability or sell its tax credit to another taxpayer if it had no New Jersey tax liability.

For reasons explained below, the OLS cannot project the value of the offsetting positive economic activity the \$20 million might generate.

Direct Fiscal Impact:

Consistent with an expectation by the New Jersey Motion Picture and Television Commission, the OLS anticipates that tax credits allowed under this bill would routinely reach the new \$30 million ceiling. The commission informed the OLS that the existing annual \$10 million cap for the film production tax credit had been reached in the two years since creation and that a backlog of credit applications existed.

Raising the credit cap by \$20 million and extending the credit to digital media productions, however, would also alter New Jersey's economy and thus affect tax collections as the policy change would ripple through the economy.

Indirect Fiscal Impact:

Evaluating a policy change's total fiscal impact requires information on the extent to which the policy change would modify behavior and on the economic ramifications of that modification. Such an assessment focuses on the policy's indirect and induced effects that provide a fiscal feedback to government as the *new* economic activity increases tax collections while it flows through the economy. Indirect effects reflect tax credit-induced input purchases by credit claimants from their suppliers and induced effects tax credit-induced spending by employees of all impacted firms.

Notwithstanding a report on the economic and fiscal benefits from a digital media tax credit in New Jersey, three critical unknowns prevent the OLS from quantifying the magnitude of the bill's indirect and induced effects.

First, it is unclear which portion of the additional \$20 million tax credit would support film projects as opposed to digital media content productions. According to the commission, there is currently sufficient demand to use all \$30 million for film productions and that is prior to this bill's easing of the eligibility criterion. The distinction between film and digital media matters

because these activities produce different feedback effects. A film project tends to be limited in time, while digital media content might be created continuously at a permanent location.

Second, for purposes of estimating New Jersey feedback effects, the OLS would have to exclude the portion of the tax credit-induced spending that would benefit economies of other jurisdictions. A California actor working on a film project in New Jersey, for example, has a New Jersey income tax liability, but most of the actor's private spending would not occur in this State. The size of the transfer of economic activity to other jurisdictions, however, is unknown.

Third, only the indirect and induced effects caused by tax credit-induced spending shifts should enter the fiscal estimate, while those from creditable spending that would have occurred absent the tax credit must be excluded. A tax credit given for a production that would have been undertaken without the tax credit does not constitute an additional benefit to the State, only a cost. The OLS, however, cannot determine the credit amounts that would fall into this category.

Even if the OLS had reasonable information on the above unknowns, the result would not represent an estimation of the bill's total fiscal impact, for the decision to invest in film and digital media content productions would divert resources from the policy alternative(s) to which they would have been applied absent the tax credit.

Net Fiscal Impact:

The bill's fiscal feedback effects would only equal its *net* fiscal feedback effects if the State's investment did not displace or forestall other spending. In actuality, given the State's finite resources and its balanced budget requirement, the bill's *net* fiscal impact would be the total of the bill's direct, indirect, and induced effects *less* the equivalent effects of the alternative use(s) of the \$20 million the legislation would preempt. For example, if, instead of this legislation, the State invested \$20 million annually in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on the media productions and that of the foregone road construction investment. The OLS, however, cannot gauge this opportunity cost.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

ASSEMBLY, No. 4250

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MAY 14, 2007

Sponsored by:

Assemblyman UPENDRA J. CHIVUKULA

District 17 (Middlesex and Somerset)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

SYNOPSIS

Provides a corporation business tax credit for certain digital media content expenses and concerning the film production expenses credit, amending P.L.2005, c.345.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT providing a corporation business tax credit for certain
2 digital media content expenses and concerning the film
3 production expenses credit, amending P.L.2005, c.345.

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

7
8 1. Section 1 of P.L.2005, c.345 (C. 54:10A-5.39) is amended to
9 read as follows:

10 1. a. A taxpayer, upon application to the Director of the Division
11 of Taxation in the Department of the Treasury and the New Jersey
12 Economic Development Authority, shall be allowed a credit against
13 the tax imposed pursuant to section 5 of P.L.1945, c.162
14 (C.54:10A-5), in an amount equal to 20 percent of the qualified film
15 production expenses of the taxpayer during a privilege period
16 commencing after the effective date of P.L.2005, c.345, provided
17 that (1) at least **[60]** 50 percent of the total film production
18 expenses, exclusive of post-production costs, of the taxpayer will be
19 incurred for services performed and goods used or consumed in
20 New Jersey, and (2) principal photography of the film commences
21 within 150 days after the approval of the application for the credit.

22 b. A taxpayer, upon application to the Director of the Division
23 of Taxation in the Department of the Treasury and the New Jersey
24 Economic Development Authority, shall be allowed a credit against
25 the tax imposed pursuant to section 5 of P.L.1945, c.162
26 (C.54:10A-5), in an amount equal to 20 percent of the qualified
27 digital media content production expenses of the taxpayer during a
28 privilege period commencing after the effective date of P.L. , c. ,
29 (pending before the Legislature as this bill), provided that at least
30 \$2,000,000 of the total digital media content production expenses of
31 the taxpayer will be incurred for services performed and goods used
32 or consumed in New Jersey.

33 c. The amount of the credit applied under this section against the
34 tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege
35 period, when taken together with any other credits allowed against
36 the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not
37 exceed 50 percent of the tax liability otherwise due and shall not
38 reduce the tax liability to an amount less than the statutory
39 minimum provided in subsection (e) of section 5 of P.L.1945,
40 c.162. The priority in which credits allowed pursuant to this section
41 and any other credits shall be taken shall be as determined by the
42 Director of the Division of Taxation. The amount of the credit
43 otherwise allowable under this section which cannot be applied for
44 the privilege period due to the limitations of this subsection or
45 under other provisions of P.L.1945, c.162 may be carried over, if

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

Matter underlined thus is new matter.

1 necessary, to the seven privilege periods following the privilege
2 period for which the credit was allowed.

3 **[c.] d.** A taxpayer may, with an application for a credit
4 provided for in subsection a. of this section, apply to the director
5 and the executive director of the authority for a tax credit transfer
6 certificate in lieu of the taxpayer being allowed any amount of the
7 credit against the tax liability of the taxpayer. The director and the
8 executive director of the authority may consult with the New Jersey
9 Motion Picture and Television Development Commission in
10 consideration of any application for approval of a tax credit or tax
11 credit transfer certificate under this section. The tax credit transfer
12 certificate, upon receipt thereof by the taxpayer from the director
13 and the authority, may be sold or assigned, in full or in part, to any
14 other taxpayer that may have a tax liability under P.L.1945, c.162
15 or N.J.S.54A:1-1 et seq., in exchange for private financial
16 assistance to be provided by the purchaser or assignee to the
17 taxpayer that has applied for and been granted the credit. The
18 certificate provided to the taxpayer shall include a statement
19 waiving the taxpayer's right to claim that amount of the credit
20 against the tax imposed pursuant to section 5 of P.L.1945, c.162
21 (C.54:10A-5) that the taxpayer has elected to sell or assign. The
22 sale or assignment of any amount of a tax credit transfer certificate
23 allowed under this section shall not be exchanged for consideration
24 received by the taxpayer of less than 75% of the transferred credit
25 amount. Any amount of a tax credit transfer certificate used by a
26 purchaser or assignee against a tax liability under P.L.1945, c.162
27 shall be subject to the same limitations and conditions that apply to
28 the use of a credit pursuant to subsection b. of this section. Any
29 amount of a tax credit transfer certificate obtained by a purchaser or
30 assignee under this section may be applied against the purchaser's
31 or assignee's tax liability under N.J.S.54A:1-1 et seq. and shall be
32 subject to the same limitations and conditions that apply to the use
33 of a credit pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12).

34 **[d.] e.** As used in this section:

35 “Digital media content” means any data or information that is
36 intended for consumption over the Internet and is produced in
37 digital form, including data or information created in analog form
38 but reformatted in digital form, text, graphics, photographs,
39 animation, sound and video content. “Digital media content” does
40 not mean content offerings generated by the end user (including
41 postings on electronic bulletin boards and chat rooms); content
42 offerings comprised primarily of local news, events, weather or
43 local market reports, public service content; electronic commerce
44 platforms (such as retail and wholesale websites); websites or
45 content offerings that contain obscene material as defined pursuant
46 to P.L.1978, c.95 (C.2C:34-2 and C.2C:34-3); websites or content
47 that are produced or maintained primarily for private, industrial,
48 corporate or institutional purposes; or digital media content

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

3 "Film" means a feature film, a television series or a television
4 show of 15 minutes or more in length, intended for a national
5 audience. "Film" shall not include a production featuring news,
6 current events, weather and market reports or public programming,
7 talk show, game show, sports event, award show or other gala
8 event, a production that solicits funds, a production containing
9 obscene material as defined under N.J.S.2C:34-2 and N.J.S.2C:34-
10 3, or a production primarily for private, industrial, corporate or
11 institutional purposes.

12 "Qualified digital media content production expenses" means an
13 expense incurred in New Jersey for the production of digital media
14 content. Qualified digital media content production expenses shall
15 include but shall not be limited to wages and salaries of individuals
16 employed in the production of digital media content on which the
17 tax imposed by the "New Jersey Gross Income Tax Act,"
18 N.J.S.54A:1-1 et seq. has been paid or is due; the costs of computer
19 software and hardware, data processing, visualization technologies,
20 sound synchronization, editing, and the rental of facilities and
21 equipment. Qualified digital media content production expenses
22 shall not include expenses incurred in marketing, promotion or
23 advertising digital media or other costs not directly related to the
24 production of digital media content. Costs related to the acquisition
25 or licensing of digital media content by the taxpayer for distribution
26 or incorporation into taxpayer's digital media content shall not be
27 digital media content production expenses.

28 "Qualified film production expenses" means an expense incurred
29 in New Jersey for the production of a film including post-
30 production costs incurred in New Jersey. Qualified film production
31 expenses shall include but shall not be limited to wages and salaries
32 of individuals employed in the production of a film on which the
33 tax imposed by the "New Jersey Gross Income Tax Act,"
34 N.J.S.54A:1-1 et seq. has been paid or **[are]** is due; the costs of
35 construction, operations, editing, photography, sound
36 synchronization, lighting, wardrobe and accessories and the cost of
37 rental of facilities and equipment. Qualified film production
38 expenses shall not include expenses incurred in marketing or
39 advertising a film.

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

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

46 "Post-production costs" means the costs of the phase of
47 production that follows principal photography, in which raw

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

3 [e.] f. The Director of the Division of Taxation in the
4 Department of the Treasury, in consultation with the New Jersey
5 Motion Picture and Television Development Commission and the
6 New Jersey Economic Development Authority, shall adopt rules in
7 accordance with the "Administrative Procedure Act," P.L.1968,
8 c.410 (C.52:14B-1 et seq.), as are necessary to implement this act
9 including examples of qualified film production and digital media
10 content production expenses and the procedures and forms to apply
11 for a credit and for a tax credit transfer certificate necessary for a
12 taxpayer to sell or assign an amount of tax credit under this section.
13 The value of credits, including tax credits allowed through the
14 granting of tax credit transfer certificates, approved by the director
15 and the authority pursuant to this section and pursuant to section 2
16 of P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total
17 of ~~[\$10,000,000]~~ \$30,000,000 in any fiscal year to apply against
18 the tax imposed pursuant to section 5 of P.L.1945, c.162
19 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey
20 Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative
21 total amount of credits and tax credit transfer certificates allowed to
22 taxpayers for privilege periods or taxable years commencing during
23 a single fiscal year under this section and section 2 of P.L.2005,
24 c.345 (C.54A:4-12) exceeds the amount of credits available in that
25 year, then taxpayers who have first applied for and have not been
26 allowed a credit or tax credit transfer certificate amount for that
27 reason shall be allowed, in the order in which they have submitted
28 an application, the amount of tax credit or certificate on the first day
29 of the next succeeding fiscal year in which tax credits and tax credit
30 transfer certificates under this section and section 2 of P.L.2005,
31 c.345 (C.54A:4-12) are not in excess of the amount of credits
32 available. The Executive Director of the New Jersey Economic
33 Development Authority, in conjunction with the Director of the
34 Division of Taxation shall prepare and submit a report to the
35 Governor and the Legislature on the effectiveness of the credit as an
36 incentive for encouraging film productions and digital media
37 content productions to locate in New Jersey which shall be
38 completed before the third taxable year or privilege period in which
39 a credit may be claimed.

40 (cf: P.L.2005, c.345, s.1)

41

42 2. This act shall take effect immediately.

43

44

45

STATEMENT

46

47 This bill provides a tax credit to businesses under the corporation
48 business tax for certain digital media content production expenses

1 incurred in New Jersey. A tax credit will be allowed in an amount
2 equal to 20 percent of the expenses incurred in New Jersey in the
3 production of digital media that is created for public Internet
4 display.

5 To be eligible for the creditable costs, at least \$2 million of the
6 total production expenses must be incurred in New Jersey.
7 Expenses that are eligible for a credit include wages and salaries,
8 actual production costs, and rental costs of facilities and equipment,
9 if incurred in New Jersey.

10 Similar tax credits for film production were established in 2006
11 to provide incentives for media production in New Jersey. This bill
12 broadens the credit program to include digital media. The credit
13 will be administered in the same manner as the film credit. As with
14 the film credit, bill requires the Executive Director of the Economic
15 Development Authority and the Director of the Division of
16 Taxation to report to the Governor and the Legislature regarding the
17 effectiveness of the credit as an incentive for encouraging film
18 productions to locate in New Jersey.

19 The current corporation business tax credit for film productions
20 is limited to \$10,000,000 per taxpayer for a fiscal year. This bill
21 raises the \$10,000,000 limit to \$30,000,000 to cover both film and
22 digital media content production.

23 Finally, the bill changes the calculation of the credit for film
24 production expenses by lowering the threshold percentage of total
25 production income that must be incurred in New Jersey from 60%
26 to 50%.

ASSEMBLY TELECOMMUNICATIONS AND UTILITIES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4250

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 2007

The Assembly Telecommunications and Utilities Committee reports favorably with committee amendments Assembly Bill No. 4250.

As amended, this bill provides a tax credit to businesses under the corporation business tax for certain digital media content production expenses incurred in New Jersey. A tax credit will be allowed in an amount equal to 20 percent of the expenses incurred in New Jersey in the production of digital media that is created for public Internet display.

To be eligible for the creditable costs, at least \$2 million of the total production expenses must be incurred in New Jersey. Expenses that are eligible for a credit include wages and salaries, actual production costs, and rental costs of facilities and equipment, if incurred in New Jersey.

Similar tax credits for film production were established in 2006 to provide incentives for media production in New Jersey. This bill broadens the credit program to include digital media. The credit will be administered in the same manner as the film credit. As with the film credit, the bill requires the Executive Director of the New Jersey Economic Development Authority and the Director of the Division of Taxation to report to the Governor and the Legislature regarding the effectiveness of the credit as an incentive for encouraging digital media productions to locate in New Jersey.

The current corporation business tax credit for film productions is limited to \$10,000,000 per taxpayer for a fiscal year. This bill raises the \$10,000,000 limit to \$30,000,000 to cover both film and digital media content production.

Finally, the bill changes the calculation of the credit for film production expenses by lowering the threshold percentage of total production income that must be incurred in New Jersey from 60% to 50%.

Committee amendments to the bill revise the definition of "digital media content" to remove a restriction on the type of digital data or

information that may be included within the definition and make minor technical corrections.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4250

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JUNE 20, 2007

SUMMARY

- Synopsis:** Provides a corporation business tax credit for certain digital media content expenses and concerning the film production expenses credit, amending P.L.2005, c.345.
- Type of Impact:** Annual Foregone General Fund and Property Tax Relief Fund Revenue and Indeterminate Annual State Revenue Gain through Fiscal Year 2015.
- Agencies Affected:** Department of the Treasury, Division of Taxation.

Office of Legislative Services Estimate

Fiscal Impact	<u>Fiscal Year 2008 through Fiscal Year 2015</u>
State Revenue Loss	\$20,000,000 per Fiscal Year
State Revenue Gain	Indeterminate

- Consistent with an expectation by the New Jersey Motion Picture and Television Commission, the Office of Legislative Services (OLS) anticipates that tax credits allowed under this bill would routinely reach the new \$30 million ceiling. The commission informed the OLS that the existing annual \$10 million cap for the film production tax credit had been reached in the two years since creation and that a backlog of credit applications existed. The film and television production industry had \$85.5 million in New Jersey production expenses in 2005, of which an estimated 70 percent (or \$60 million) might have been eligible for the tax credit.
- The OLS cannot project the value of the offsetting positive economic and fiscal effects that might result from this legislation. Regardless, the OLS notes that the bill would only generate an economic and fiscal benefit to the State with regards to film and digital media productions that would not have occurred without the tax credit.

BILL DESCRIPTION

Assembly Bill No. 4250 (2R) of 2007 raises the annual cap on the total amount of film production tax credits from \$10 million to \$30 million and extends the credit to qualified digital media productions. Credit recipients may sell their credits to other taxpayers and no credit may be issued after June 30, 2015. The bill also lowers the *film* credit's eligibility requirement that 60 percent of total *film* production expenses must be incurred in New Jersey to 50 percent.

The bill provides a tax credit against corporate business tax liabilities to businesses in an amount equal to 20 percent of the expenses they incur in New Jersey in the production of qualified *digital* media content. To be eligible for the creditable costs, at least \$2 million of the total *digital* media production expenses must be incurred in New Jersey.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill would produce an annual State revenue loss of \$20 million from fiscal year 2008 through fiscal year 2015, after which the agency projects no further cost, as the underlying statute does not allow for the approval of tax credits after June 30, 2015. This estimate assumes that the year for which a tax credit would be granted to a business would be the year in which the business would either apply the full credit amount against its tax liability or sell its tax credit to another taxpayer if it had no New Jersey tax liability.

For reasons explained below, the OLS cannot project the value of the offsetting positive economic activity the \$20 million might generate.

Direct Fiscal Impact: Consistent with an expectation by the New Jersey Motion Picture and Television Commission, the OLS anticipates that tax credits allowed under this bill would routinely reach the new \$30 million ceiling. The commission informed the OLS that the existing annual \$10 million cap for the film production tax credit had been reached in the two years since creation and that a backlog of credit applications existed.

Raising the credit cap by \$20 million and extending the credit to digital media productions, however, would also alter New Jersey's economy and thus affect tax collections as the policy change would ripple through the economy.

Indirect Fiscal Impact: Evaluating a policy change's total fiscal impact requires information on the extent to which the policy change would modify behavior and on the economic ramifications of that modification. Such an assessment focuses on the policy's indirect and induced effects that provide a fiscal feedback to government as the *new* economic activity increases tax collections while it flows through the economy. Indirect effects reflect tax credit-induced input purchases by credit claimants from their suppliers and induced effects tax credit-induced spending by employees of all impacted firms.

Notwithstanding a report on the economic and fiscal benefits from a digital media tax credit in New Jersey, three critical unknowns prevent the OLS from quantifying the magnitude of the bill's indirect and induced effects.

First, it is unclear which portion of the additional \$20 million tax credit would support film projects as opposed to digital media content productions. According to the commission, there is currently sufficient demand to use all \$30 million for film productions and that is prior to this bill's easing of the eligibility criterion. The distinction between film and digital media matters because these activities produce different feedback effects. A film project tends to be limited in time, while digital media content might be created continuously at a permanent location.

Second, for purposes of estimating New Jersey feedback effects, the OLS would have to exclude the portion of the tax credit-induced spending that would benefit economies of other jurisdictions. A California actor working on a film project in New Jersey, for example, has a New Jersey income tax liability, but most of the actor's private spending would not occur in this State. The size of the transfer of economic activity to other jurisdictions, however, is unknown.

Third, only the indirect and induced effects caused by tax credit-induced spending shifts should enter the fiscal estimate, while those from creditable spending that would have occurred absent the tax credit must be excluded. A tax credit given for a production that would have been undertaken without the tax credit does not constitute an additional benefit to the State, only a cost. The OLS, however, cannot determine the credit amounts that would fall into this category.

Even if the OLS had reasonable information on the above unknowns, the result would not represent an estimation of the bill's total fiscal impact, for the decision to invest in film and digital media content productions would divert resources from the policy alternative(s) to which they would have been applied absent the tax credit.

Net Fiscal Impact: The bill's fiscal feedback effects would only equal its *net* fiscal feedback effects if the State's investment did not displace or forestall other spending. In actuality, given the State's finite resources and its balanced budget requirement, the bill's *net* fiscal impact would be the total of the bill's direct, indirect, and induced effects *less* the equivalent effects of the alternative use(s) of the \$20 million the legislation would preempt. For example, if, instead of this legislation, the State invested \$20 million annually in road construction, the bill would produce a *net* fiscal effect equal to the difference between the total fiscal impact of the amount spent on the media productions and that of the foregone road construction investment. The OLS, however, cannot gauge this opportunity cost.

Section: Revenue, Finance and Appropriations

*Analyst: Thomas Koenig
Associate Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

SENATE BILL NO. 2526
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2526 (First Reprint) with my recommendations for reconsideration.

A. Summary of Bill

This bill would establish a new corporation business tax credit program for certain digital media content production expenses and would amend current law governing the State's existing film production tax credit program. New Jersey's film production tax credit program was established in 2006 to provide incentives for undertaking certain film production activities in this state. Current law requires, inter alia, that in order to be eligible for film production tax credits in the amount of 20 percent of qualified film production expenses, a taxpayer must incur at least 60 percent of the total film production expenses, exclusive of post-production costs, for services performed and goods used or consumed in New Jersey. Under current law, credits can be applied against corporation business tax liability, gross income tax liability, or both, and the cumulative cap for corporation business tax and gross income tax credits for film production is \$10,000,000 for each fiscal year until 2015.

This bill would create a digital media content production expense tax credit program modeled after the corporation business credit tax component of the film production tax credit program. The proposed new credit would be in an amount equal to 20 percent of the "qualified

digital media content production expenses" of the taxpayer, provided that at least \$2,000,000 of the total digital media content production expenses of the taxpayer are incurred for services performed and goods used or consumed in New Jersey. The bill defines a "qualified digital media content production expense" to include only expenses incurred in New Jersey.

Separately, the bill would broaden the eligibility criterion governing the current corporation business tax credit for film production by lowering the threshold percentage of total film production expenses that must be incurred in New Jersey from 60 percent to 50 percent. Finally, the bill would include both the new corporation business tax credit for digital media content production and the existing corporation business tax and gross income tax credits for film production within a single annual cumulative cap, which would increase from \$10,000,000 to \$30,000,000.

B. Recommended Action

I commend the sponsors of this bill for their good-faith efforts intended to build New Jersey's economic base and potentially grow new jobs in the State. A central focus of my administration is to strengthen New Jersey's business climate by adopting policies that will facilitate economic growth, job creation, and the development of a world-class workforce. To that end, I established the Office of Economic Growth in 2006 to spearhead the administration's job-creation efforts. The New Jersey Economic Development Authority, through its administration of important business development and community revitalization programs, also plays a crucial role in these

efforts. Through the intelligent management of our limited State resources, my administration is committed to creating a stronger and more stable business environment for businesses to grow, prosper, and create jobs in New Jersey.

I am, therefore, concerned that the significant tax benefit program authorized under this bill does not include any express job-creation requirement. While proponents of this legislation contend that the powerful and rapidly emerging digital media industry, further energized by these new tax credits, will generate a number of excellent new employment opportunities in the State, it would be preferable to include job creation as an express component of the tax credit program and to consider job creation in calculating the amount of tax credits to be awarded. Job-creation provisions are standard features in the State's other major business incentive programs and I believe they are necessary here as well.

I also am concerned that the bill would loosen the eligibility requirement for the existing film production tax credit program by lowering the threshold of total film production expenses that must be incurred in New Jersey from 60 percent to 50 percent. I am not aware of a need to change the eligibility requirement in this way and therefore recommend that the bill be amended to maintain the existing requirement.

Moreover, as currently crafted, this bill does not necessarily ensure that any portion of the newly authorized tax credits will go to digital media, as opposed to film, production activities in New Jersey. I believe a better approach would be to separate these related, but distinct, tax credit programs.

I further believe that the proposed tripling of the cumulative amount of tax credits called for in this bill (\$30 million compared to \$10 million under current law) is not justified at this time from a fiscal standpoint. I therefore recommend that the annual cap for the new digital media tax credit program be set at \$5 million.

Finally, I believe an amendment to the bill is necessary to prevent a taxpayer from securing tax credits under this program based on job-creation that also is used as a basis for securing a grant or credit under either of the State's other principal business incentive grant and credit programs, the Business Employment Incentive Program (BEIP) and the Business Retention and Relocation Assistance Grant (BRRAG) program. Under current law, a taxpayer cannot secure a credit under the BEIP program based on job-creation that also forms the basis for a grant under the BRRAG program. This policy serves the beneficial purpose of maximizing the job-creation potential of these programs, and such a policy also should apply to the film and digital media tax credit program under this legislation.

With these recommended improvements and the additional suggested amendments set forth at length below, I believe we can continue to sustain the benefits associated with the current film program while extending new incentives for digital media production activities that involve the creation of permanent full-time jobs in New Jersey. Accordingly, I herewith return Senate Bill No. 2526 (First Reprint) and recommend that it be amended as follows:

Page 2, Section 1, Line 17: Delete "50" and insert "60"

- Page 2, Section 1, Line 26: Delete "equal to" and insert "up to"
- Page 2, Section 1, Line 26: After "20 percent" insert ", as determined by the authority,"
- Page 2, Section 1, Line 32: After "New Jersey" insert "and at least a significant percentage, as determined by the authority, of the qualified digital media content production expenses of the taxpayer will include wages and salaries paid to one or more new full-time employees in New Jersey. For purposes of this subsection, 'new full-time employee' means a person 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 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 who is a partner of a taxpayer that is an eligible partnership, 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 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., and who is determined by the authority to work in a newly created

permanent position according to criteria it develops. 'New full-time employee' shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. In determining the amount of any grant of tax credits made pursuant to this subsection, the authority shall consider the number of new full-time positions created by the taxpayer as well as the quality of the full-time positions created, including but not limited to the salaries and benefits provided to new full-time employees. The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the grant of tax credits pursuant to this subsection in the event the taxpayer fails to maintain the new full-time positions that were included in calculating the qualified digital media content production expenses of the taxpayer."

- Page 3, Section 1, Line 5: After "subsection a." insert "or subsection b."
- Page 3, Section 1, Line 29: After "subsection" delete "b." and insert "c."
- Page 3, Section 1, Line 31: After "under" insert "subsection a. of"
- Page 5, Section 1, Line 17: After "pursuant to" insert "subsection a. of"
- Page 5, Section 1, Line 19: Delete "\$30,000,000" and insert "\$10,000,000"

- Page 5, Section 1, Line 25: After "under" insert
"subsection a. of"
- Page 5, Section 1, Line 32: After "under" insert
"subsection a. of"
- Page 5, Section 1, Line 34: After "available." insert
"The value of credits,
including tax credits allowed
through the granting of tax
credit transfer certificates,
approved by the director and
the authority pursuant to
subsection b. of this section
shall not exceed a total of
\$5,000,000 in any fiscal year
to apply against the tax
imposed pursuant to section 5
of P.L.1945, c.162 (C.54:10A-
5). If the total amount of
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 exceeds
the amount of credits
available in that year, then
taxpayers who have first
applied for and have not been
allowed a 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 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 are not in excess of
the amount of credits
available."
- Page 5, Section 1, Line 41: After "claimed." insert new
subsection (g): "For the
purpose of determining
eligibility for or the amount

of any grant of tax credits pursuant to this section, the authority shall not include any job that is included in the calculation of a business employment incentive grant pursuant to the provisions of P.L.1996, c.26 (C.34:1B-124 et seq.) or a business retention and relocation grant pursuant to P.L.1996, c. 25 (C.34:1B-112 et seq.)."

Page 8, Section 2, Line 9: After "and pursuant to" insert "subsection a. of"

Page 8, Section 2, Line 11: Delete "\$30,000,000" and insert "\$10,000,000"

Page 8, Section 2, Line 17: After "and" insert "subsection a. of"

Page 8, Section 2, Line 24: After "section and" insert "subsection a. of"

Respectfully,

/s/ Jon S. Corzine

Governor

[seal]

Attest:

/s/ Kenneth H. Zimmerman

Chief Counsel to the Governor