

54:10A-5.39

LEGISLATIVE HISTORY CHECKLIST

Compiled by the NJ State Law Library

LAWS OF: 2005 **CHAPTER:** 345

NJSA: 54:10A-5.39 (Provides a credit under the corporation business tax and gross income tax for film production expenses incurred in NJ and provides for the transfer of those tax credits to other taxpayers)

BILL NO: S2533 (Substituted for A4508)

SPONSOR(S): Adler and others

DATE INTRODUCED: May 12, 2005

COMMITTEE: **ASSEMBLY:**

SENATE: Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 9, 2006

SENATE: January 5, 2006

DATE OF APPROVAL: January 12, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted)

S2533

[SPONSOR'S STATEMENT](#): (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

[FLOOR AMENDMENT STATEMENT](#): Yes

[LEGISLATIVE FISCAL ESTIMATE](#): Yes

A4508

[SPONSOR'S STATEMENT](#): (Begins on page 5 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

No

IS 2/27/08

P.L. 2005, CHAPTER 345, *approved January 12, 2006*
Senate, No. 2533 (*Second Reprint*)

1 AN ACT providing a credit under the corporation business tax and the
2 gross income tax for certain film production expenses incurred in
3 New Jersey, ¹providing for the transfer of such tax credits under a
4 tax credit certificate transfer program,¹ and supplementing chapter
5 4 of Title 54A of the New Jersey Statutes and P.L.1945, c.162
6 (C.54:10A-1 et seq.).

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

10
11 1. a. A taxpayer ¹, upon application to the Director of the Division
12 of Taxation in the Department of the Treasury and the New Jersey
13 Economic Development Authority,¹ shall be allowed a credit against
14 the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-
15 5), in an amount equal to 20 percent of the qualified film production
16 expenses ¹[paid by]of¹ the taxpayer during a privilege period
17 ¹commencing after the effective date of P.L. , c. (pending before
18 the Legislature as this bill),¹ provided that ¹(1)¹ at least 60 percent of
19 the total production expenses ¹[paid by], exclusive of post-
20 production costs, of¹ the taxpayer ¹[are]will be¹ incurred for services
21 performed and goods used or consumed in New Jersey ¹, and (2)
22 principal photography of the film commences within 150 days after the
23 approval of the application for the credit¹.

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

38 c. ¹A taxpayer may, with an application for a credit provided 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:

¹ Senate SBA committee amendments adopted December 5, 2005.

² Senate floor amendments adopted December 8, 2005.

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

31 d.¹ As used in this section:

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

40 "Qualified film production expenses" means an expense incurred in
41 ¹New Jersey for¹ the production of a film ¹including post-production
42 costs incurred in New Jersey¹. Qualified film production expenses
43 shall include but shall not be limited to wages and salaries of
44 individuals employed in the production of a film on which the tax
45 imposed by "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
46 seq. has been paid or are due; the costs of construction, operations,
47 editing, photography, sound synchronization, lighting, wardrobe and

1 accessories and the cost of rental of facilities and equipment. Qualified
2 film production expenses shall not include expenses incurred in
3 marketing or advertising a film.

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

7 "Post-production costs" means the costs of the phase of production
8 that follows principal photography, in which raw footage is cut and
9 assembled into a finished film with sound synchronization and visual
10 effects.¹

11 ¹[d.] e.¹ The Director of the ¹Division of Taxation in the
12 Department of the Treasury, in consultation with the New Jersey
13 Motion Picture and Television Development Commission ¹and the
14 New Jersey Economic Development Authority¹, shall adopt rules in
15 accordance with the "Administrative Procedure Act," P.L.1968, c.410
16 (C.52:14B-1 et seq.), as are necessary to implement this act including
17 examples of qualified film production expenses ¹and the procedures
18 and forms to apply for a credit and for a tax credit transfer certificate
19 necessary for a taxpayer to sell or assign an amount of tax credit under
20 this section¹. The value of credits ¹, including tax credits allowed
21 through the granting of tax credit transfer certificates.¹ approved by
22 the ¹[division] director and the authority¹ pursuant to this section and
23 pursuant to section 2 of P.L. , c. (C.) (now pending before
24 the Legislature as this bill) shall not exceed a ¹cumulative¹ total of
25 \$10,000,000 in any fiscal year ¹to apply against the tax imposed
26 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax
27 imposed pursuant to the "New Jersey Gross Income Tax Act,"
28 N.J.S.54A:1-1 et seq.. If the cumulative total amount of credits and
29 tax credit transfer certificates allowed to taxpayers for privilege
30 periods or taxable years commencing during a single fiscal year under
31 this section and section 2 of P.L. , c. (C.) (pending before the
32 Legislature as this bill) exceeds the amount of credits available in that
33 year, then taxpayers who have first applied for and have not been
34 allowed a credit or tax credit transfer certificate amount for that
35 reason shall be allowed, in the order in which they have submitted an
36 application, the amount of tax credit or certificate on the first day of
37 the next succeeding fiscal year in which tax credits and tax credit
38 transfer certificates under this section and section 2 of P.L. , c.
39 (C.) are not in excess of the amount of credits available¹. The
40 Executive Director of the New Jersey ¹[Motion Picture and Television
41 Development Commission]Economic Development Authority¹, in
42 conjunction with the Director of the Division of Taxation shall
43 prepare and submit a report to the Governor and the Legislature on
44 the effectiveness of the credit as an incentive for encouraging film
45 productions to locate in New Jersey which shall be completed before
46 the third taxable year or privilege period in which a credit may be
47 claimed.

1 2. a. A taxpayer ¹, upon application to the Director of the Division
2 of Taxation in the Department of the Treasury and the New Jersey
3 Economic Development Authority, ¹shall be allowed a credit against
4 the tax otherwise due for the taxable year under the "New Jersey
5 Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to
6 20 percent of the qualified film production expenses ¹[paid by] ¹of¹ the
7 taxpayer during a taxable year ¹commencing after the effective date of
8 P.L. , c. (pending before the Legislature as this bill), ¹ provided
9 that ¹(1)¹ at least 60 percent of the total production expenses ¹[paid
10 by], exclusive of post-production costs, ¹of¹ the taxpayer ¹[are] will
11 be¹ incurred for services performed and goods used or consumed in
12 New Jersey ¹, and (2) principal photography of the film commences
13 within 150 days after the approval of the application for the credit¹.

14 b. ²[The amount of the credits applied under this section for a
15 taxable year, when taken together with any other credits allowed
16 against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not
17 exceed 50 percent of the liability otherwise due for the taxable year.
18 The priority in which credits allowed pursuant to this section and any
19 other credits shall be taken shall be as determined by the Director of
20 the Division of Taxation. The amount of the credit otherwise
21 allowable under this section which cannot be applied for the taxable
22 year due to the limitations of this subsection may be carried over, if
23 necessary, to the seven taxable years following the taxable year for
24 which the credit was allowed.] The amount of the credit allowed
25 pursuant to this section shall be applied against the tax otherwise due
26 under N.J.S.54A:1-1 et seq. after all other credits and payments. If the
27 credit exceeds the amount of tax otherwise due, that amount of excess
28 shall be an overpayment for the purposes of N.J.S.54A:9-7.²

29 c. ¹A taxpayer may, with an application for a credit provided for in
30 subsection a. of this section, apply to the director and the executive
31 director of the authority for a tax credit transfer certificate in lieu of
32 the taxpayer being allowed any amount of the credit against the tax
33 liability of the taxpayer. The director and the executive director of the
34 authority may consult with the New Jersey Motion Picture and
35 Television Development Commission in consideration of any
36 application for approval of a tax credit or tax credit transfer certificate
37 under this section. The tax credit transfer certificate, upon receipt
38 thereof by the taxpayer from the director and the authority, may be
39 sold or assigned, in full or in part, to any other taxpayer that may have
40 a tax liability under N.J.S.54A:1-1 et seq. or P.L.1945, c.162
41 (C.54:10A-1 et seq., in exchange for private financial assistance to be
42 provided by the purchaser or assignee to the taxpayer that has applied
43 for and been granted the credit. The certificate provided to the
44 taxpayer shall include a statement waiving the taxpayer's right to claim
45 that amount of the credit against the tax imposed pursuant to
46 N.J.S.54A:1-1 et seq., that the taxpayer has elected to sell or assign.
47 The sale or assignment of any amount of a tax credit transfer

1 certificate allowed under this section shall not be exchanged for
2 consideration received by the taxpayer of less than 75% of the
3 transferred credit amount. Any amount of a tax credit transfer
4 certificate used by a purchaser or assignee against a tax liability under
5 N.J.S.54A:1-1 et seq., shall be subject to the same limitations and
6 conditions that apply to the use of a credit pursuant to subsection b.
7 of this section. Any amount of a tax credit transfer certificate obtained
8 by a purchaser or assignee under this section may be applied against
9 the purchaser's or assignee's tax liability under P.L.1945, c.162 and
10 shall be subject to the same limitations and conditions that apply to the
11 use of a credit pursuant to section 1 of P.L. , c. (pending before
12 the Legislature as this bill).

13 d.¹ A partnership shall not be allowed a credit under this section
14 directly, but the amount of credit ¹or tax credit transfer certificate¹ of
15 a taxpayer in respect of a distributive share of partnership income
16 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,
17 shall be determined by allocating to the taxpayer that proportion of the
18 credit ¹or certificate¹ acquired by the partnership that is equal to the
19 taxpayer's share, whether or not distributed, of the total distributive
20 income or gain of the partnership for its taxable year ending within or
21 with the taxpayer's taxable year. For the purposes of subsection b. of
22 this section, the amount of tax liability that would be otherwise due of
23 a taxpayer is that proportion of the total liability of the taxpayer that
24 the taxpayer's share of the partnership income or gain included in gross
25 income bears to the total gross income of the taxpayer. ¹The
26 provisions of subsection c. of this section shall apply to the amount of
27 any credit or certificate of a taxpayer in respect of a distributive share
28 of partnership income.¹

29 ¹[d.] e.¹ As used in this section:

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

38 "Qualified film production expenses" means an expense incurred in
39 ¹New Jersey for¹ the production of a film ¹including post-production
40 costs incurred in New Jersey¹. Qualified film production expenses
41 shall include but shall not be limited to wages and salaries of
42 individuals employed in the production of a film on which the tax
43 imposed by "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
44 seq. has been paid or are due; the costs of construction, operations,
45 editing, photography, sound synchronization, lighting, wardrobe and
46 accessories and the cost of rental of facilities and equipment.
47 Qualified film production expenses shall not include expenses incurred

1 in marketing or advertising a film.

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

5 "Post production costs" means the costs of the phase of production
6 that follows principal photography, in which raw footage is cut and
7 assembled into a finished film with sound synchronization and visual
8 effects.¹

9 ¹[e.] f.¹ The ¹Director of the¹ Division of Taxation in the
10 Department of the Treasury, in consultation with the New Jersey
11 Motion Picture and Television Development Commission ¹and the
12 New Jersey Economic Development Authority¹ , shall adopt rules in
13 accordance with the "Administrative Procedure Act," P.L.1968, c.410
14 (C.52:14B-1 et seq.), as are necessary to implement this act including
15 examples of qualified film production expenses ¹and the procedures
16 and forms to apply for a credit and for a tax credit transfer certificate
17 necessary for a taxpayer to sell or assign an amount of tax credit under
18 this section¹. The amount of credits ¹, including tax credits allowed
19 through the granting of tax credit transfer certificates,¹ approved by
20 the ¹[division] director and the authority¹ pursuant to this section and
21 pursuant to section 1 of P.L. , c. (C.) (pending before the
22 Legislature as this bill) shall not exceed a ¹cumulative¹ total of
23 \$10,000,000 in any fiscal year ¹to apply against the tax imposed under
24 N.J.S.54A:1-1 et seq., and the tax imposed pursuant to section 5 of
25 P.L.1945, c.162 (C.54:10A-5)¹. ¹If the cumulative total amount of
26 credits and tax credit transfer certificates allowed to taxpayers for
27 taxable years or privilege periods commencing during a single fiscal
28 year under this section and section 1 of P.L. , c. (C.) (pending
29 before the Legislature as this bill) 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 amount
32 for that reason shall be allowed, in the order in which they have
33 submitted an application, the amount of tax credit or certificate on the
34 first day of the next succeeding fiscal year in which tax credits and tax
35 transfer certificates under this section and section 1 are not in excess
36 of the amount of credits available.¹ The Executive Director of the New
37 Jersey ¹[Motion Picture and Television Development Commission]
38 Economic Development Authority¹, in conjunction with the Director
39 of the 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 to locate in New Jersey
42 which shall be completed before the third taxable year or privilege
43 period in which a credit may be claimed.

44

45 3. This act shall take effect immediately¹ and apply to qualified film
46 production expenses incurred on or after the date of enactment¹, and
47 sections 1 and 2 shall apply respectively to privilege periods and

1 taxable years beginning on and after ¹[January] July¹ 1, 2005 ¹[next
2 following enactment]¹ and shall expire with privilege periods and
3 taxable years first commencing after ¹[December 31] July 1¹, 2015.
4
5
6 _____
7
8 Provides a credit under the corporation business tax and gross income
9 tax for film production expenses incurred in New Jersey and provides
10 for the transfer of those tax credits to other taxpayers.

SENATE, No. 2533

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MAY 12, 2005

Sponsored by:

Senator JOHN H. ADLER

District 6 (Camden)

Senator JOSEPH V. DORIA, JR.

District 31 (Hudson)

SYNOPSIS

Provides a credit under the corporation business tax and gross income tax for film production expenses incurred in New Jersey.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/10/2005)

1 AN ACT providing a credit under the corporation business tax and the
2 gross income tax for certain film production expenses incurred in
3 New Jersey, and supplementing chapter 4 of Title 54A of the New
4 Jersey Statutes and P.L.1945, c.162 (C.54:10A-1 et seq.).
5

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

9 1. a. A taxpayer shall be allowed a credit against the tax imposed
10 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
11 equal to 20 percent of the qualified film production expenses paid by
12 the taxpayer during a privilege period provided that at least 60 percent
13 of the total production expenses paid by the taxpayer are incurred for
14 services performed and goods used or consumed in New Jersey.

15 b. The amount of the credit applied under this section against the
16 tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege
17 period, when taken together with any other credits allowed against the
18 tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed
19 50 percent of the tax liability otherwise due and shall not reduce the
20 tax liability to an amount less than the statutory minimum provided in
21 subsection (e) of section 5 of P.L.1945, c.162. The priority in which
22 credits allowed pursuant to this section and any other credits shall be
23 taken shall be as determined by the Director of the Division of
24 Taxation. The amount of the credit otherwise allowable under this
25 section which cannot be applied for the privilege period due to the
26 limitations of this subsection or under other provisions of P.L.1945,
27 c.162 may be carried over, if necessary, to the seven privilege periods
28 following the privilege period for which the credit was allowed.

29 c. As used in this section:

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

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

1 marketing or advertising a film.

2 d. The Division of Taxation in the Department of the Treasury, in
3 consultation with the New Jersey Motion Picture and Television
4 Development Commission, shall adopt rules in accordance with the
5 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
6 seq.), as are necessary to implement this act including examples of
7 qualified film production expenses. The value of credits approved by
8 the division pursuant to this section and pursuant to section 2 of
9 P.L. , c. (C.) (now pending before the Legislature as this
10 bill) shall not exceed a total of \$10,000,000 in any fiscal year. The
11 Executive Director of the New Jersey Motion Picture and Television
12 Development Commission, in conjunction with the Director of the
13 Division of Taxation shall prepare and submit a report to the Governor
14 and the Legislature on the effectiveness of the credit as an incentive
15 for encouraging film productions to locate in New Jersey which shall
16 be completed before the third taxable year or privilege period in which
17 a credit may be claimed.

18

19 2. a. A taxpayer shall be allowed a credit against the tax otherwise
20 due for the taxable year under the "New Jersey Gross Income Tax
21 Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the
22 qualified film production expenses paid by the taxpayer during a
23 taxable year provided that at least 60 percent of the total production
24 expenses paid by the taxpayer are incurred for services performed and
25 goods used or consumed in New Jersey.

26 b. The amount of the credits applied under this section for a
27 taxable year, when taken together with any other credits allowed
28 against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not
29 exceed 50 percent of the liability otherwise due for the taxable year.
30 The priority in which credits allowed pursuant to this section and any
31 other credits shall be taken shall be as determined by the Director of
32 the Division of Taxation. The amount of the credit otherwise
33 allowable under this section which cannot be applied for the taxable
34 year due to the limitations of this subsection may be carried over, if
35 necessary, to the seven taxable years following the taxable year for
36 which the credit was allowed.

37 c. A partnership shall not be allowed a credit under this section
38 directly, but the amount of credit of a taxpayer in respect of a
39 distributive share of partnership income under the "New Jersey Gross
40 Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by
41 allocating to the taxpayer that proportion of the credit acquired by the
42 partnership that is equal to the taxpayer's share, whether or not
43 distributed, of the total distributive income or gain of the partnership
44 for its taxable year ending within or with the taxpayer's taxable year.
45 For the purposes of subsection b. of this section, the amount of tax
46 liability that would be otherwise due of a taxpayer is that proportion
47 of the total liability of the taxpayer that the taxpayer's share of the

1 partnership income or gain included in gross income bears to the total
2 gross income of the taxpayer.

3 d. As used in this section:

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

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

22 e. The Division of Taxation in the Department of the Treasury, in
23 consultation with the New Jersey Motion Picture and Television
24 Development Commission, shall adopt rules in accordance with the
25 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
26 seq.), as are necessary to implement this act including examples of
27 qualified film production expenses. The amount of credits approved
28 by the division pursuant to this section and pursuant to section 1 of
29 P.L. , c. (C.) (now pending before the Legislature as this
30 bill) shall not exceed a total of \$10,000,000 in any fiscal year. The
31 Executive Director of the New Jersey Motion Picture and Television
32 Development Commission, in conjunction with the Director of the
33 Division of Taxation shall prepare and submit a report to the Governor
34 and the Legislature on the effectiveness of the credit as an incentive
35 for encouraging film productions to locate in New Jersey which shall
36 be completed before the third taxable year or privilege period in which
37 a credit may be claimed.

38
39 3. This act shall take effect immediately, and sections 1 and 2 shall
40 apply respectively to privilege periods and taxable years beginning on
41 and after January 1 next following enactment and shall expire with
42 privilege periods and taxable years first commencing after December
43 31, 2015.

1 STATEMENT

2

3 This bill provides a tax credit to businesses in an amount equal to
4 20 percent of the expenses incurred in New Jersey in the production
5 of a feature film, television series or television show of 15 minutes or
6 more in length which are created for a national audience. The credit
7 is intended to give film makers an additional incentive to locate
8 productions to the Garden State at a time when interest in filming here
9 is at an all-time high for many reasons, including the state's location
10 diversity.

11 To be eligible for the creditable costs, 60 percent of the total
12 production expenses must be incurred in New Jersey. Expenses that
13 are eligible for a credit include wages and salaries, construction,
14 operations, editing, photography, sound, lighting, wardrobe and
15 accessories and rental facilities and equipment. The bill requires that
16 the Division of Taxation, in conjunction with the New Jersey Motion
17 Picture and Television Development Commission, develop rules for
18 the administration of the credit. Credits will not be allowed in excess
19 of \$10,000,000 per fiscal year and may be claimed for the next ten tax
20 years. The bill also requires the commission and the division to report
21 to the Governor and the Legislature regarding the effectiveness of the
22 credit as an incentive for encouraging film productions to locate in
23 New Jersey.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2533

with committee amendments

STATE OF NEW JERSEY

DATED: December 5, 2005

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 2533.

This bill provides a tax credit to businesses under the corporation business tax and the gross income tax for certain film production expenses incurred in New Jersey and provides for the transfer of those tax credits to other New Jersey taxpayers under a tax credit certificate transfer program. A tax credit will be allowed in an amount equal to 20 percent of the expenses incurred in New Jersey in the production of a feature film, television series or television show of 15 minutes or more in length which are created for a national audience. The credit is intended to give film makers an additional incentive to locate productions to the Garden State at a time when interest in filming here is at an all-time high for many reasons, including the state's location diversity.

To be eligible for the creditable costs, 60 percent of the total production expenses, exclusive of post-production costs, must be incurred in New Jersey and principal photography must commence within 150 days after approval of a credit application. Expenses that are eligible for a credit include wages and salaries, construction, operations, editing, photography, sound, lighting, wardrobe and accessories, rental facilities and equipment and post-production costs if incurred in New Jersey. The bill requires that the Director of the Division of Taxation, in conjunction with the Executive Directors of the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, develop rules for the administration of the credit. Credits and transferable tax credit certificates will not be allowed in excess of \$10,000,000 per fiscal year and may be used in full or in part for the next ten tax years. The transfer of a credit amount must provide the seller of the credit amount with private financial assistance equal to at least 75% of the amount of the credit transferred. If credit applications exceed \$10,000,000 during a fiscal year then taxpayers will be allowed credits beginning in the next fiscal year based on the order in which they had applied for credits during the prior year. The

bill also 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 film productions to locate in New Jersey.

COMMITTEE AMENDMENTS:

The committee amendments restructure the credit, the application process, and establish the process for receiving tax credit transfer certificates. To claim the credit, the threshold for production expenses that must be incurred in New Jersey of 60% of total production expenses will be measured disregarding post-production expenses. However, to calculate the credit amount, qualified film expenses incurred in New Jersey may include post-production expenses incurred in New Jersey. Also, principal photography of the film must commence within 150 days after approval of the application for the credit in order to be allowed to claim or transfer any credit amount. The amendments also establish the requirement that the seller of a tax credit receive private financial assistance as consideration for the transfer equal to at least 75% of the amount of the credit transferred. The amendments also allow tax credit certificate amounts to be transferred between both the corporation business tax and the gross income tax. The amendments also update the effective date to cover qualified film production expenses incurred on or after the date of enactment of the bill and allow credits for tax years beginning on and after July 1, 2005.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the State General Fund and the Property Tax Relief Fund combined may experience a combined annual revenue cost of up to \$10,000,000 in each of the 10 fiscal years in which new credits will be allowed under this bill, fiscal years 2006 through 2015.

The OLS notes that the bill imposes an annual \$10 million cap on the cumulative amount of tax credits granted, thereby implying that at most \$50 million of eligible New Jersey film production expenses will qualify annually for the tax credit. New Jersey Motion Picture and Television Commission data indicate that qualifying expenses exceeded \$50 million in 2003 and 2004, and the OLS assumes that these levels of credit-eligible production expenses will continue to be incurred in future years so that the cap will be reached in each fiscal year.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2533

STATE OF NEW JERSEY

211th LEGISLATURE

DATED: DECEMBER 30, 2005

SUMMARY

- Synopsis:** Provides a credit under the corporation business tax and gross income tax for film production expenses incurred in New Jersey and provides for the transfer of those tax credits to other taxpayers.
- Type of Impact:** Annual Foregone General Fund and Property Tax Relief Fund Revenue through Fiscal Year 2015.
- Agencies Affected:** Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	Fiscal Year 2006	Fiscal Year 2007	Fiscal Year 2008
State Cost	\$10,000,000	\$10,000,000	\$10,000,000

- ! 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 will routinely reach the annual \$10 million cap. The cap implies that at most \$50 million of eligible New Jersey film production expenses will qualify annually for the tax credit. The OLS estimates that \$54.7 million such expenses took place in 2003 and \$58.1 million in 2004.
- ! The bill does not allow any tax credit after June 30, 2015.

BILL DESCRIPTION

Senate Bill No. 2533 (2R) of 2005 provides a tax credit against corporate business tax or gross income tax liabilities to businesses in an amount equal to 20 percent of the expenses they incur in New Jersey in the production of feature films, television series or television shows of 15 minutes or more in length which are created for a national audience. To be eligible for the creditable costs, 60 percent of total production expenses, exclusive of post-production costs, must be incurred in New Jersey. The total amount of approved credits in any fiscal year cannot exceed \$10 million and no credit may be issued after June 30, 2015. Credit recipients may transfer their credits to other taxpayers.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects this bill to reduce State revenue collections by \$10.0 million annually from fiscal year 2006 through fiscal year 2015, after which the agency projects no further impact, as the bill does not allow for the approval of tax credits after June 30, 2015. The OLS estimates that about \$8.5 million of the annual revenue loss will accrue to the General Fund as reduced corporation business tax revenue and that the remaining \$1.5 million will accrue to the Property Tax Relief Fund in the form of depressed gross income tax collections. This estimate assumes that the year for which a tax credit will be granted to a business will be the year in which the business will apply the full credit amount against its tax liability. Since business could sell their tax credit to other taxpayers if they did not have a tax liability in New Jersey, the OLS expects businesses to claim the full credit amount to which they would be entitled even if they had no tax liability.

To gauge the tax credit's anticipated cost, the OLS obtains data from the New Jersey Motion Picture and Television Commission, indicating that the film and television production industry had \$70.2 million in New Jersey production expenses in 2002, \$78.1 million in 2003, and \$83.0 million in 2004.

To qualify for the tax credit, a film project cannot be a commercial, industrial film or music video. The commission reports that about 30 percent of total New Jersey film production expenses tend to be for such film projects. Taking 70 percent of total New Jersey production expenses, the OLS arrives at \$49.1 million in creditable expenses in 2002, \$54.7 million in 2003, and \$58.1 million in 2004.

Since the bill caps the total annual credit amount to be allowed at \$10 million and since the credit is for 20 percent of eligible New Jersey production expenses, no more than \$50 million in statewide production expenses could qualify for the credit. Given that these expenses exceeded \$50 million in 2003 and 2004, the OLS assumes that the cap will be reached in each fiscal year, an expectation the agency shares with the commission. The OLS notes, however, that this assumption implies that almost all eligible New Jersey production expenses meet the credit's qualifying criterion that sixty percent of a film project's total production expenses, exclusive of post-production costs, must be incurred in New Jersey.

Next, the OLS divides the bill's estimated cost in corporation business tax revenue loss and gross income tax revenue loss based on the "2002 Statistics of Income Bulletin" by the Internal Revenue Service, as cited by the New Jersey Department of the Treasury in its fiscal estimate for Senate Bill No. 484 of 2004, according to which corporate businesses claimed 85 percent of business deductions in 2002 (impacting corporation business tax revenue to the General Fund) and that partnerships and sole proprietorships claimed the remaining 15 percent (affecting the gross income tax revenue to the Property Tax Relief Fund). In the absence of detailed knowledge on the composition of the film industry, the OLS applies this ratio to the credit's estimated total cost.

Section: *Revenue, Finance and Appropriations*

Analyst: *Thomas Koenig*
Associate Fiscal Analyst

Approved: *David J. Rosen*
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.

STATEMENT TO

[First Reprint]

SENATE, No. 2533

with Senate Floor Amendments
(Proposed By Senator ADLER)

ADOPTED: DECEMBER 8, 2005

This amendment provides that any gross income tax credit under this bill is treated as are other allowed gross income tax credits: as an overpayment of tax that may be refunded if in excess of the taxpayer's taxable year liability, or carried over as a credit for the following taxable year.

ASSEMBLY, No. 4508

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 8, 2005

Sponsored by:

Assemblyman ALBIO SIRES

District 33 (Hudson)

SYNOPSIS

Provides a credit under the corporation business tax and gross income tax for film production expenses incurred in New Jersey.

CURRENT VERSION OF TEXT

As introduced.



A4508 SIRES

1 AN ACT providing a credit under the corporation business tax and the
2 gross income tax for certain film production expenses incurred in
3 New Jersey, and supplementing chapter 4 of Title 54A of the New
4 Jersey Statutes and P.L.1945, c.162 (C.54:10A-1 et seq.).
5

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

9 1. a. A taxpayer shall be allowed a credit against the tax imposed
10 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount
11 equal to 20 percent of the qualified film production expenses paid by
12 the taxpayer during a privilege period provided that at least 60 percent
13 of the total production expenses paid by the taxpayer are incurred for
14 services performed and goods used or consumed in New Jersey.

15 b. The amount of the credit applied under this section against the
16 tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege
17 period, when taken together with any other credits allowed against the
18 tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed
19 50 percent of the tax liability otherwise due and shall not reduce the
20 tax liability to an amount less than the statutory minimum provided in
21 subsection (e) of section 5 of P.L.1945, c.162. The priority in which
22 credits allowed pursuant to this section and any other credits shall be
23 taken shall be as determined by the Director of the Division of
24 Taxation. The amount of the credit otherwise allowable under this
25 section which cannot be applied for the privilege period due to the
26 limitations of this subsection or under other provisions of P.L.1945,
27 c.162 may be carried over, if necessary, to the seven privilege periods
28 following the privilege period for which the credit was allowed.

29 c. As used in this section:

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

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

A4508 SIRES

1 film production expenses shall not include expenses incurred in
2 marketing or advertising a film.

3 d. The Division of Taxation in the Department of the Treasury, in
4 consultation with the New Jersey Motion Picture and Television
5 Development Commission, shall adopt rules in accordance with the
6 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
7 seq.), as are necessary to implement this act including examples of
8 qualified film production expenses. The value of credits approved by
9 the division pursuant to this section and pursuant to section 2 of
10 P.L. , c. (C.) (now pending before the Legislature as this
11 bill) shall not exceed a total of \$10,000,000 in any fiscal year. The
12 Executive Director of the New Jersey Motion Picture and Television
13 Development Commission, in conjunction with the Director of the
14 Division of Taxation shall prepare and submit a report to the Governor
15 and the Legislature on the effectiveness of the credit as an incentive
16 for encouraging film productions to locate in New Jersey which shall
17 be completed before the third taxable year or privilege period in which
18 a credit may be claimed.

19

20 2. a. A taxpayer shall be allowed a credit against the tax otherwise
21 due for the taxable year under the "New Jersey Gross Income Tax
22 Act," N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the
23 qualified film production expenses paid by the taxpayer during a
24 taxable year provided that at least 60 percent of the total production
25 expenses paid by the taxpayer are incurred for services performed and
26 goods used or consumed in New Jersey.

27 b. The amount of the credits applied under this section for a
28 taxable year, when taken together with any other credits allowed
29 against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not
30 exceed 50 percent of the liability otherwise due for the taxable year.
31 The priority in which credits allowed pursuant to this section and any
32 other credits shall be taken shall be as determined by the Director of
33 the Division of Taxation. The amount of the credit otherwise
34 allowable under this section which cannot be applied for the taxable
35 year due to the limitations of this subsection may be carried over, if
36 necessary, to the seven taxable years following the taxable year for
37 which the credit was allowed.

38 c. A partnership shall not be allowed a credit under this section
39 directly, but the amount of credit of a taxpayer in respect of a
40 distributive share of partnership income under the "New Jersey Gross
41 Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined by
42 allocating to the taxpayer that proportion of the credit acquired by the
43 partnership that is equal to the taxpayer's share, whether or not
44 distributed, of the total distributive income or gain of the partnership
45 for its taxable year ending within or with the taxpayer's taxable year.
46 For the purposes of subsection b. of this section, the amount of tax

A4508 SIRES

1 liability that would be otherwise due of a taxpayer is that proportion
2 of the total liability of the taxpayer that the taxpayer's share of the
3 partnership income or gain included in gross income bears to the total
4 gross income of the taxpayer.

5 d. As used in this section:

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

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

24 e. The Division of Taxation in the Department of the Treasury, in
25 consultation with the New Jersey Motion Picture and Television
26 Development Commission, shall adopt rules in accordance with the
27 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.), as are necessary to implement this act including examples of
29 qualified film production expenses. The amount of credits approved
30 by the division pursuant to this section and pursuant to section 1 of
31 P.L. , c. (C.) (now pending before the Legislature as this
32 bill) shall not exceed a total of \$10,000,000 in any fiscal year. The
33 Executive Director of the New Jersey Motion Picture and Television
34 Development Commission, in conjunction with the Director of the
35 Division of Taxation shall prepare and submit a report to the Governor
36 and the Legislature on the effectiveness of the credit as an incentive
37 for encouraging film productions to locate in New Jersey which shall
38 be completed before the third taxable year or privilege period in which
39 a credit may be claimed.

40

41 3. This act shall take effect immediately, and sections 1 and 2 shall
42 apply respectively to privilege periods and taxable years beginning on
43 and after January 1 next following enactment and shall expire with
44 privilege periods and taxable years first commencing after December
45 31, 2015.

1 STATEMENT

2

3 This bill provides a tax credit to businesses in an amount equal to
4 20 percent of the expenses incurred in New Jersey in the production
5 of a feature film, television series or television show of 15 minutes or
6 more in length which are created for a national audience. The credit
7 is intended to give film makers an additional incentive to locate
8 productions to the Garden State at a time when interest in filming here
9 is at an all-time high for many reasons, including the state's location
10 diversity.

11 To be eligible for the creditable costs, 60 percent of the total
12 production expenses must be incurred in New Jersey. Expenses that
13 are eligible for a credit include wages and salaries, construction,
14 operations, editing, photography, sound, lighting, wardrobe and
15 accessories and rental facilities and equipment. The bill requires that
16 the Division of Taxation, in conjunction with the New Jersey Motion
17 Picture and Television Development Commission, develop rules for
18 the administration of the credit. Credits will not be allowed in excess
19 of \$10,000,000 per fiscal year and may be claimed for the next ten tax
20 years. The bill also requires the commission and the division to report
21 to the Governor and the Legislature regarding the effectiveness of the
22 credit as an incentive for encouraging film productions to locate in
23 New Jersey.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4508

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 5, 2006

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4508, with committee amendments.

Assembly Bill No. 4508, as amended, provides a tax credit to businesses under the corporation business tax and the gross income tax for certain film production expenses incurred in New Jersey and provides for the transfer of those tax credits to other New Jersey taxpayers under a tax credit certificate transfer program. A tax credit will be allowed in an amount equal to 20 percent of the expenses incurred in New Jersey in the production of a feature film, television series or television show of 15 minutes or more in length which are created for a national audience. The credit is intended to give film makers an additional incentive to locate productions to the Garden State at a time when interest in filming here is at an all-time high for many reasons, including the state's location diversity.

To be eligible for the creditable costs, 60 percent of the total production expenses, exclusive of post-production costs, must be incurred in New Jersey and principal photography must commence within 150 days after approval of a credit application. Expenses that are eligible for a credit include wages and salaries, construction, operations, editing, photography, sound, lighting, wardrobe and accessories, rental facilities and equipment and post-production costs if incurred in New Jersey. The bill requires that the Director of the Division of Taxation, in conjunction with the Executive Directors of the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, develop rules for the administration of the credit. Credits and transferable tax credit certificates will not be allowed in excess of \$10,000,000 per State fiscal year and may be used in full or in part for the next ten tax years. The transfer of a credit amount must provide the seller of the credit amount with private financial assistance equal to at least 75% of the amount of the credit transferred. If credit applications exceed \$10,000,000 during a fiscal year then taxpayers will be allowed credits beginning in the next fiscal year based on the order in which they had applied for credits during the prior year. The

bill also 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 film productions to locate in New Jersey.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the State General Fund and the Property Tax Relief Fund combined may experience a combined annual revenue cost of up to \$10,000,000 in each of the 10 fiscal years in which new credits will be allowed under this bill, fiscal years 2006 through 2015.

The OLS notes that the bill imposes an annual \$10 million cap on the cumulative amount of tax credits granted, thereby implying that at most \$50 million of eligible New Jersey film production expenses will qualify annually for the tax credit. New Jersey Motion Picture and Television Commission data indicate that qualifying expenses exceeded \$50 million in 2003 and 2004, and the OLS assumes that these levels of credit-eligible production expenses will continue to be incurred in future years so that the cap will be reached in each fiscal year.

COMMITTEE AMENDMENTS:

The amendments restructure the credit, restructure the application process, and establish the process for receiving tax credit transfer certificates. To claim the credit, the threshold for production expenses that must be incurred in New Jersey of 60% of total production expenses will be measured disregarding post-production expenses. However, to calculate the credit amount, qualified film expenses incurred in New Jersey may include post-production expenses incurred in New Jersey. Also, principal photography of the film must commence within 150 days after approval of the application for the credit in order to be allowed to claim or transfer any credit amount. The amendments also establish the requirement that the seller of a tax credit receive private financial assistance as consideration for the transfer equal to at least 75% of the amount of the credit transferred. The amendments allow tax credit certificate amounts to be transferred between both the corporation business tax and the gross income tax. This amendments provide that a gross income tax credit under this bill may be refunded if in excess of the taxpayer's taxable year liability, or carried over as a credit for the following taxable year. The amendments also update the effective date to cover qualified film production expenses incurred on or after the date of enactment of the bill and allow credits for tax years beginning on and after July 1, 2005.