



Draft Amendments to the Garden State Film and Digital Media Tax Credit Program Rules Proposal for Informal Public Comment

PURPOSE OF DOCUMENT

These draft rules amendments include program updates to the Garden State Film and Digital Media Tax Credit Program, in accordance with P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, P.L. 2021, c. 367, and P.L. 2023, c. 97. In accordance with Executive Order 63, these draft rules are being provided to enable the public to provide input.

BACKGROUND

The New Jersey Economic Development Authority serves as the State's principal agency for driving economic growth. The Authority is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy. Through partnerships with a diverse range of stakeholders, the Authority creates and implements initiatives to enhance the economic vitality and quality of life in the State and strengthen New Jersey's long-term economic competitiveness.

The film tax credit program was first created in 2005 by P.L. 2005, c. 345 and codified at N.J.S.A. 54:10A-5.39; N.J.S.A. 54A:4-12. After the Film program was reinstated in 2018, it was substantially amended including as part of the Economic Recovery Act (ERA), P.L. 2020, c. 156, in 2020. These draft rule amendments revise the Garden State Film and Digital Media Rules, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c.97.

PROGRAM OVERVIEW

The Garden State Film and Digital Media Jobs Act, N.J.S.A. 54:10A-5.39b and N.J.S. 54A:4-12b, provides a transferable credit against the corporation business tax and the gross income tax for qualified expenses incurred for the production of certain film and digital media content in New Jersey. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey.

These draft amendments include, but are not limited to:

- Clarifying certain defined terms to aid the implementation of the program, including “applicant,” “commitment period,” “digital media content,” “eligibility period,” “homeowner,” “incurred in New Jersey,” “loan out company,” “New Jersey film-lease partner,” “New Jersey film-lease production company,” “qualified digital media content production expenses,” “qualified film production expenses,” “total digital media content production expenses,” and “total film production expenses.”
- Clarifying eligibility criteria and process for the program, including eligibility for “applicants” applying as a studio partner, a film-lease production company, and a film-lease partner facility.
- Clarification of the application submission requirements, e.g., pertaining to projected costs and to a film production that involves an eligible reality show.
- Updating required program fees.
- Revising the amount of film tax credits allowed for certain applications based on the date of application from 30 to 35 percent of qualified film production expenses, and the amount of digital media tax credits allowed from 20 to 30 percent of qualified production expenses.
- Revising the amount of film tax credits allowed for studio partners from 35 to 40 percent of certain qualified film production expenses.
- Clarifying that documentation required to be reviewed and evaluated for total film production expenses and total digital media content production expenses shall be prepared by an independent certified public accountant.
- For applicants not applying as a studio partner or a film-lease production company, increasing the cumulative cap on the value of certain tax credits from \$75,000,000 to \$100,000,000 in fiscal years 2023 through 2039, rather than the current 2024.
- Raising the per-year cap on the value of certain tax credits from \$10,000,000 to \$30,000,000 in fiscal year 2019 and each year thereafter prior to fiscal year 2040, rather than the current 2024.
- Beginning in fiscal year 2023, in addition to the \$150,000,000 made available for New Jersey studio partners and film-lease production companies, an additional \$400,000,000 is made available annually, at the discretion of the Authority, to New Jersey studio partners for the award of tax credits, and an additional \$250,000,000 is made available for New Jersey film-lease production companies.

The draft new rules include, but are not limited to:

- Establishing eligibility requirements for any applicant applying to be designated as a studio partner, to be designated as film-lease partner facility, and to produce a reality show respectively.
- Clarifying eligibility requirements such that for two or more buildings to qualify as a production facility, the building must be proximate to each other, which means buildings that are adjacent to each other or across a single right-of-way from each other.
- Delineating the requirements for a completed application to be designated as a studio partner or film-lease partner facility, including a deed, executed lease for at least ten years or purchase contract for the production facility, detailed floorplan of the production

facility, and evidence that the applicant has made a commitment to produce films or commercial audio visual products in New Jersey.

- Providing for an increase in the amount of a tax credit allowed to four percent of the qualified film or digital media content production expenses if the diversity plan outlines specific goals that include hiring certain persons as performers in the film or digital media production.
- Allowing the Authority to, at its discretion, employ an independent consultant, at the cost of the applicant, to review the initial budget submitted by the applicant to determine if the qualified film or digital media expenses are within reasonable industry standards.
- Delineating the instances in which taxpayer's qualified film production expenses and digital media content expenses shall be adjusted due to any discrepancies found based on a report prepared by a certified public accountant.
- Establishing the process for application and designation as a studio partner or film-lease partner facility; process requires the execution of an award agreement; and imposes certain compliance, reporting, and certification requirements for an applicant designated as studio partner or film-lease partner facility.
- Establishing provisions for the recapture and reduction of tax credits for certain instances in which a studio partner and film-lease partner facility are not in compliance with certain requirements.
- Establishing a process for increasing the available allocation for film-lease production companies if a designated studio partner no longer meets the requirements of the program for the film-lease partner facility designation.
- Codifying the process by which the Authority certifies the amount of certain remaining tax credits available and increasing the total cumulative amounts accordingly.
- Codifying the requirements for applicants to comply with the Authority's affirmative action and prevailing wage requirements.

ANTICIPATED PROGRAM MILESTONES

The Authority currently anticipates bringing new special adoption amendments to the current Garden State Film and Digital Media Tax Credit Program Rules to its Board for consideration on February 14, 2024. If the Board approves the new special adoption rules, they will be published in the New Jersey Register for an additional formal 60-day public comment period in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq.

PUBLIC FEEDBACK: WRITTEN COMMENTS

Members of the public will be able to submit feedback on the new Aspire Program rules through the NJEDA's Economic Recovery Act website

(<https://www.njeda.gov/economicrecoveryact/program-specific-feedback/>) between the following dates:

- **PUBLIC FEEDBACK OPEN: December 4, 2023 at 5pm EST**
- **PUBLIC FEEDBACK CLOSED: December 19, 2023 at 3:00pm EST**

All feedback received through this process will be assessed and considered when preparing the final version of the rule amendments that is reviewed and approved by the Authority Board. Following potential Board approval and publication in the New Jersey Register, there will be an additional 60-day period for formal public comment.

Please observe the following guidelines when submitting your feedback:

PLEASE DO:

- Reference a specific part of the rules by section and subsection when providing comments
- Share your feedback, relevant observations, and additional information.
- Keep comments brief and to the point.
- Use attachments to share more detailed or formal feedback.

PLEASE DO NOT:

- Include information that you do not want to be made public.
- Submit any information or other material protected by copyright without the permission of the copyright owner.
- Submit comments about topics unrelated to these draft amendments to the Garden State Film and Digital Media Tax Credit Program.

We may, at NJEDA's sole discretion, publish any, all, or a representative sample of comments in full or in part.

Do not include any information in your comment that you do not want to become public. Do not include any personally identifying or contact information if you do not want to be identified. (Providing optional contact information, however, will allow us to follow up with you if clarification is needed.) We will not accept or agree to a request to keep information confidential.

By submitting material, you grant to the NJEDA the non-exclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

EO63

DRAFT GARDEN STATE FILM AND DIGITAL MEDIA SPECIAL ADOPTION RULES AMENDMENTS

Note: This document is a draft for EO63 comment purposes only. Please excuse all typos and citation errors.

Full text of the current rules and draft amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

19:31-21.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Division of Taxation to implement the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56[.], **as amended by P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c. 97.**

19:31-21.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Applicant” means:

- (1) A film production company applying for designation as a studio partner;**
- (2) An entity applying for designation as a film-lease partner facility;**
- (3) A person applying for a tax credit for qualified film production expenses. Such entity includes, but is not limited to, a designated studio partner or an entity applying for a tax credit as a film-lease production company; or**
- (4) A person applying for a tax credit for qualified digital media content production expenses.**

“Approved applicant” means an applicant for a tax credit for qualified film production expenses or qualified digital media content production expenses that has received initial approval from the Authority.

"Authority" means the New Jersey Economic Development Authority.

"Business assistance or incentive" means "business assistance or incentive" as that term is defined pursuant to N.J.S.A. 54:50-39[d].

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

"Commitment period" means for film-lease partner facilities, a period of five successive years beginning with the later of the date of Authority approval or the issuance of the temporary certificate(s) of occupancy, and for studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

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

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

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

"Director" means the Director of the New Jersey Division of Taxation.

"Eligibility period" means, with respect to studio partners, the period in which a studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the applicant's designation as a studio partner, beginning the earlier of (1) the commencement of the principal photography for the studio partner's initial film in New Jersey or (2) (i) in the case of a studio partner developing or purchasing a production facility, at the issuance of a temporary certificate(s) of occupancy for the production facility developed or purchased as a condition of designation as a studio partner, (ii) in the case of a studio partner leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a studio partner, and extending thereafter for a term of not more than 10 years.

"Film" or "film project" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, (1) a game show, [award show,] (2) talk show, (3) competition or variety show

filmed before a live audience, or (4) award show or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production featuring news, current events, weather, and market reports or public programming, [talk show], or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.A. 2C:34-2 and 2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except for [taxpayers] **applicants** applying for a tax credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 165, if the production company of the reality show owns, leases, or otherwise occupies a production facility [of no less than 20,000 square feet of real property] for a minimum term of 24 months, and [invests] **makes a capital investment**, after July 1, 2018, **of** no less than \$ 3,000,000 in such a facility within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2. The **capital** investment of the production company may include the **capital** investment of its landlord after July 1, 2018. To determine the **capital** investment of the landlord, the Authority shall multiply the owner's total capital investment in the building by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Film production uses" means film studio, professional stage, sound stage, television studio, recording studio, screening room, or other production support space or infrastructure used for producing films or other commercial audiovisual products, including, but not limited to, production offices, mill space, or backlots, provided that the predominant use shall not be administrative or back-office use and that backlots shall not exceed 20 percent of the required minimum size of the production facility.

"Fiscal year" means the State's fiscal year, which begins July 1 and ends June 30.

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

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

services.

“Homeowner” means an individual who owns and occupies a personal residence, whether as their primary residence or otherwise.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (July 3, 2018), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160 (July 2, 2021), service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or, at the Authority's discretion, the film production company provides to the Authority the vendor's information in a form and manner prescribed by the Authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided that the approved applicant has made the withholding required by N.J.S.A. 54:10A-5.39b(g), N.J.S.A. 54A:4-12b(h), and N.J.A.C. 19:31-21.3(c).

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

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

"New Jersey film-lease partner facility" or “film-lease partner facility” means one of the following for which the owner, developer, or tenant has made the commitment to build, lease, or operate for a period of at least the commitment period:

(1) a production facility;

(2) a production facility built, leased, or operated by a production company

designated as a studio partner, which the studio partner no longer occupies; or

(3) a portion of a production facility owned by a studio partner that is in excess of the space being utilized by the studio partner; provided that the space utilized by the studio partner both exceeds the minimum size for a studio partner and film-lease partner facility, respectively.

"New Jersey film-lease production company" or "film-lease production company" means an applicant, including any applicant that is a member of a combined group under N.J.S.A. 54:10A-4.11 or any other entity in which the film-lease production company has a material ownership interest of at least 30 percent and material operational role in the production, including, but not limited to, as a producer, that otherwise complies with the eligibility requirements of the program and has made a commitment to lease or otherwise occupy production space in a film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the film project within New Jersey at the film-lease partner facility. A "New Jersey film-lease production company" may include an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated film-lease production company contracts to perform film production services on its behalf such that the designated film-lease production company controls such film or product during preproduction, production, and postproduction, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976," 17 U.S.C. § 101 et seq.

"New Jersey studio partner" or "studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility, which purchase contract must be executed within 48 months from the date of designation as a New Jersey studio partner; provided, however, the Authority Board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. A "studio partner" shall also include a film production company that executes at least a 10-year lease for a production facility that is a portion of a film-lease partner facility. A "New Jersey studio partner" may include any other member of an applicant's combined group, pursuant to N.J.S.A. 54:10A-4.11. For the purpose of applying for film tax credits pursuant to N.J.A.C. 19:31-21.3, a "New Jersey studio partner" shall also mean an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated studio partner contracts to perform film production services on its behalf such that the designated studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the studio partner pursuant to the provisions of the federal "Copyright Act of 1976," 17 U.S.C. § 101 et seq.

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

"Personal residence" means a residential unit, the land on which the residential unit is located, and any other structures on such land. A personal residence includes, but is not limited to, a condominium, a unit in a horizontal property regime, or a unit in a cooperative or mutual housing corporation of a residential shareholder. A personal residence excludes a multi-family residential structure of more than four units and a residential unit that another person occupies as that person's primary residence.

"Post-production costs" means the costs of the phase of production of a film that follows principal photography, in which raw footage is cut and assembled into a finished film with sound synchronization and visual effects. There shall be no distinguishing between the production and post-production phases for animated films due to the intertwined relationship between those two phases in animation.

"Pre-production costs" means the costs of the phase of production of a film that precedes principal photography, in which a detailed schedule and budget for the production is prepared, the script and location is finalized, and contracts with vendors are negotiated. For animated films, pre-production constitutes the period of time during which models are drawn on paper and/or created in the computer (for example, storyboarding).

"Primary place of business" means, for purposes of determining the amount of tax credit pursuant to N.J.A.C. 19:31-[21.6(1)2 and 3]**21.6(a) and (b)**, the headquarters or commercial facility of a vendor at which the qualified expense transaction occurs.

"Principal photography" means the filming of major and significant portions of a qualified film that involves the lead actors or actresses. For animated films, "principal photography" means the point at which the models created during the pre-production phase are complete and the staff begins to choreograph, animate, and render the animations.

"Privilege period" means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

"Production facility" means a building or buildings in New Jersey used for film production uses of no less than 20,000 square feet for a production company of a reality show and no less than 250,000 square feet for a film-lease partner facility or a studio partner.

"Program" means the Garden State Film and Digital Media Jobs Program.

"Qualified digital media content production expenses" means expenses incurred in New Jersey after July 1, 2018, for the production of digital media content. "Qualified digital media content production expenses" shall include, but [shall] not be limited to, wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payments made to a loan out company or to an

independent contractor shall not be **deemed** a “qualified digital media content production expenses” unless the payments are made in connection with a trade, profession, or occupation carried out in this State or for the rendition of personal services performed in the State and the [taxpayer] **approved applicant** has made the withholding required [by] **pursuant to** N.J.A.C. 19:31-21.3(c). “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the [taxpayer] **approved applicant** for distribution or incorporation into the [taxpayer's] **approved applicant’s** digital media content, **or other costs for intangible personal expenses**, shall not be **deemed** “qualified digital media content production expenses.”

“Qualified film production expenses” means an expense incurred in New Jersey after July 1, 2018, for the production of a film, including pre-production costs, and post-production costs incurred in New Jersey. “Qualified film production expenses” shall include, but [shall] not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs for tangible personal property used and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be **deemed** a “qualified film production expense[s]” unless the payments are made in connection with a trade, profession, or occupation [carried on] **performed** in this State or for the rendition of personal services performed in this State and the [taxpayer] **approved applicant** has made the withholding required [by] **pursuant to** N.J.A.C. 19:31-21.3(c). **As of the effective date of P.L. 2023, c. 97 (July 6, 2023) payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a “qualified film production expense” unless the approved applicant has made the withholding required by N.J.S.A. 54:10A-5.39b(g), N.J.S.A. 54A:4-12b(h), and N.J.A.C. 19:31-21.3(c). For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by studio partners, provided the studio partner files a supplemental report as set forth in N.J.A.C. 19:31-21.7(f).** “Qualified film production expenses” shall not include: **costs for intangible personal expenses incurred after the effective date of these amendments;** expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[.], **except as follows:**

(1) for a studio partner that incurs less than \$50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$18,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(2) for a studio partner that incurs \$50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$72,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(3) for a film-lease production company that incurs less than \$50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$15,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

(4) for a film-lease production company that incurs \$50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.

“Reality show” means content that is centered around the filming of people in real-life, predominantly unscripted or soft-scripted, situations.

"Selling business" means [a taxpayer] **an approved applicant** that has unused tax credits, which it wishes to sell.

“Shoot day” means a minimum of eight hours from first unit crew call to wrap.

“Square feet” means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces. For backlot, “square feet” means the area dedicated by the applicant for backlot use as evidenced on a site plan.

"Taxable year" means the calendar or fiscal accounting period for which a tax is payable under N.J.S.A. 54A:1-1 et seq., and commencing on or after July 1, 2018, but before July 1, [2023] **2039**.

"Taxation" means the New Jersey Division of Taxation.

"Tax credit transfer certificate" means the certificate issued by [the Division of] Taxation certifying to the selling business the amounts of film tax credit being sold. The certificate shall state that the transferor waives its right to claim the credit shown on the certificate. The certificate shall [show the fiscal year in which the application was initially approved and] have the same tax credit vintage year as the original tax credit certificate.

"Tax credit vintage year" means the applicant's privilege period or taxable year in which the

Authority issued the initial approval of the application, **until the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to applicants exceeds the amounts of tax credits available in a fiscal year, after which “tax credit vintage year” shall mean the next subsequent privilege period or taxable year of the applicant in which tax credits are available** [and the tax credit may be applied].

“Taxpayer” means, for the purposes of this subchapter, an applicant, a designated studio partner, a designated film-lease partner facility, or an approved applicant.

“Total digital media content production expenses” means costs for services performed and property used or consumed in the production of digital media content including, but not limited to, wages and salaries. “Total digital media content production expenses” shall not include costs for intangible personal expenses incurred after the effective date of these amendments.

“Total film production expenses” means costs for services performed and tangible personal property used or consumed in the production of a film including, but not limited to, wages and salaries. “Total film production expenses” shall not include costs for intangible personal expenses incurred after the effective date of these amendments.

“Vendor authorized to do business in New Jersey” means a vendor that has obtained authorization to conduct business in this State by filing the appropriate documents with the State of New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.

19:31-21.3 Eligibility criteria

(a) [A taxpayer] **An applicant** shall be eligible for the program for film tax credits if the Authority finds that:

1. The [taxpayer] **applicant** will incur after July 1, 2018:

i. [, at] **At least 60 percent of the total film production expenses, exclusive of post-production costs, for services performed, and goods purchased, through vendors authorized to do business in New Jersey, including wages and salaries, or**

ii. [the] **The qualified film production expenses of the [taxpayer] applicant during at least one privilege period or taxable year for services performed, and goods purchased, through vendors authorized to do business in New Jersey, including wages and salaries, exceed \$1,000,000 per production;**

2. The principal photography of the film commences within [the earlier of] 180 days from the date of the completed application for the tax credit [, or 150 days from the date of the initial approval of the application pursuant to N.J.A.C. 19:31-21.7(a) for the tax credit];

3. The film includes, when determined to be appropriate by the Commission, taking into account factors including, but not limited to, the budget and audience of the film, at no cost to

the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a “Filmed in New Jersey” or “Produced in New Jersey” statement, or an appropriate logo approved by the Commission, in the end credits of the film;

4. The [taxpayer] **applicant** submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)2; [and]

5. The [taxpayer] **applicant** complies with the withholding requirements provided for payments to loan out companies, [and] independent contractors, **and any homeowner** in accordance with (c) below;

6. At least one principal photography day is shot within New Jersey; and

7. For a studio partner or film-lease production company, the principal photography of the film commenced after the designation of the studio partner or the corresponding film-lease partner facility.

(b) [A taxpayer] **An applicant** shall be eligible for the program for digital media tax credits if the Authority finds that:

1. The [taxpayer] **applicant** will incur qualified digital media content production expenses during a privilege period or taxable year, provided that:

i. At least \$ 2,000,000 of the total digital media content production expenses of the [taxpayer] **applicant** are incurred for services performed, and goods purchased, through vendors authorized to do business in New Jersey, **including wages and salaries;**

ii. At least 50 percent of the qualified digital media content production expenses of the [taxpayer] **applicant** are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey; and

iii. The [taxpayer] **applicant** submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)2; and

2. The [taxpayer] **applicant** complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with (c) below

(c) [A taxpayer] **An approved applicant** shall withhold from each payment to a loan out company, [or] to an independent contractor, **or, for an applicant for a film tax credit, to a homeowner for the use of a personal residence** an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to **the “New Jersey Gross Income Tax Act,”** N.J.S.A. 54A:1-1 et seq., and the

[taxpayer] **approved applicant** shall be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the [taxpayer] **approved applicant** withheld.

(d) For any applicant applying to be designated as a studio partner, the applicant shall be eligible if the applicant demonstrates to the Authority that the applicant meets the definition of a studio partner for purposes of designation and that it shall satisfy the conditions of approval in N.J.A.C. 19:31-21.8(f) within the prescribed time. No more than three film production companies may be designated as a studio partner.

(e) For any applicant applying to be designated as a film-lease partner facility, the applicant shall be eligible if the applicant demonstrates to the Authority that the applicant meets the definition of a film-lease partner facility and that it shall satisfy the conditions of approval in N.J.A.C. 19:31-21.8(f) within the prescribed time.

- 1. If the document evidencing current or prospective site control submitted in the application pursuant to N.J.A.C. 19:31-21.4(c) has a term that extends for less than the requested commitment period based on the anticipated commencement of the commitment period, the applicant's commitment period shall be reduced accordingly.**
- 2. Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a studio partner by the Authority on or before the 181st day next following the effective date of P.L. 2023, c. 97 (July 6, 2023), in order for a production facility to be designated as a film-lease partner facility, the owner or developer shall accept the acquisition by the Authority, at the Authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the Authority and the film-lease partner facility and on the condition that the Authority's may require the applicant to redeem the investment if the applicant is not compliant with the program. The Authority may, at its discretion, accept the offer to purchase the shares of stock by the qualified venture firm or any other investor in lieu of redemption.**
- 3. No more than three New Jersey production facilities may be designated as a film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a studio partner.**

(f) For any applicant applying to produce a reality show, the applicant will be eligible for the program if the Authority finds the applicant meets the requirements set forth in (a) of this section and demonstrates to the Authority that the applicant's production meets the definition of a reality show and meets the requirements for reality show productions set forth in the definition of a film.

(g) For two or more buildings to qualify as a production facility, the buildings must be proximate to each other. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of buildings that are proximate:

- 1. A production facility consists of building A and building B, which are both on the same block, but separated by other buildings.**
- 2. A production facility consists of building A and building B, which are adjacent to each other, but have separate entrances.**
- 3. A production facility consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.**

19:31-21.4 Application submission requirements

(a) A completed application for film tax credits shall include [, but not be limited to, the following]:

1. A preliminary budget for the film project with a breakout of projected costs, including pre-production costs and post-production costs;
2. A breakout of projected total film production expenses, excluding pre-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.3(a)1, for services performed and goods purchased through vendors authorized to do business in New Jersey;
3. A breakout of projected qualified film production expenses, pursuant to N.J.A.C. 19:31-21.3(a)2, in New Jersey;
- 4. For applications filed before July 2, 2021, the effective date of P.L. 2021, c. 160, [A] a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(h)2 or 3, for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County; and for applications filed on or after P.L. 2021, c. 367 (July 2, 2021), a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(a)2 for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York;**

5. A description of the **film** project, which must include:

- i. A plot summary;
- ii. The genre and subject matter;
- iii. The anticipated film rating, if applicable;
- iv. The names of principals and actors; and
- v. The location(s) for filming;

6. The filming schedule;

7. The anticipated or actual dates of commencement and completion of principal photography
and total film production expenses;

[8. An election by the taxpayer as to whether the tax credit will be based on total film production expenses, exclusive of post-production costs, or on qualified film expenses during a privilege period or taxable year, that exceed \$ 1,000,000 per production;]

[9.] **8.** If the applicant is a partnership or limited liability company, a list of members or owners applying for a tax credit under this program, including the percentage of ownership interest of each;

[10.] **9.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)1i through iv; and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)2i through iii;

[11.] **10.** If the film production involves an eligible reality show, a description of the capital investment, which shall be no less than \$ 3,000,000, and a description of the production facility, which shall be no less than 20,000 square feet of real property, respectively, within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2 [.] , **and an executed letter of interest, lease, sublease, deed, or purchase contract;**

11. If the applicant is seeking a film tax credit as a studio partner:

i. A certification from the studio partner that it remains eligible as a studio partner;

and

ii. If the applicant is not the designated studio partner, one of the following:

(1) Written verification that the applicant is a member of the studio partner's group pursuant to N.J.S.A. 54:10A-4.11; or

(2) For "works made for hire" for the studio partner:

(A) Documentation evidencing that the applicant is principally engaged in the production of film and other commercial audiovisual product;

(B) An executed contract with the studio partner to perform film production services for the film on the studio partner's behalf such that the studio partner controls the film or product during preproduction, production, and post-production and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the studio partner pursuant to the provisions of the federal "Copyright Act of 1976," 17 U.S.C. § 101 et seq.; and

(C) Opinion of counsel that the executed contract with the studio partner satisfies the criteria in (B) above;

12. If the applicant is seeking a film tax credit as a film-lease production company:

i. A certification from the film-lease partner facility that it remains eligible as a film-lease partner facility;

ii. Filming schedule including all locations in and out of the State of New Jersey;

iii. An executed lease, license, or letter of intent to occupy production space in a film-lease partner facility during the required principal photography shoot days at the facility; and

iv. If the applicant is not the film-lease production company, one of the following:

(1) Written verification that the applicant is a member of the film-lease production company's combined group;

(2) Any documentation evidencing the film-lease production company's ownership interest in the applicant and any agreement evidencing the film-lease production company's operational role in the film production; or

(3) For "works made for hire" for the film-lease production company:

(A) Documentation evidencing that the applicant is principally engaged in the production of film and other commercial audiovisual product;

(B) An executed contract with the film-lease production company to perform film production services for the film on the film-lease production company's behalf such that the designated film-lease production company controls the film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the New Jersey studio partner pursuant to the provisions of the federal "Copyright Act of 1976," 17 U.S.C. § 101 et seq.; and

(C) Opinion of counsel that the executed contract with the studio partner satisfies the criteria in (B) above; and

13. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) A completed application to be designated as a studio partner shall include:

1. An executed deed, lease, sublease, purchase contract for the production facility, or letter of intent with a governmental authority for the purchase of property for the purpose of developing a production facility. The executed lease or sublease shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period;

2. A detailed floor plan or, if the production facility comprises multiple buildings, a site plan, indicating the uses of each area, the total square footage of the production facility, and the square footage of any backlot;

3. Evidence that the applicant has made a commitment to produce films or commercial audiovisual products in New Jersey;

4. Except for an applicant that will execute a purchase contract with a governmental authority, preliminary site plan approval or temporary certificate(s) of occupancy for the production facility, an adopted redevelopment plan by a municipality or municipalities which contemplates the development of the production facility, or an executed redevelopment agreement with a municipality or municipalities for the development of the production facility; and

5. Any other necessary and relevant information as determined by the Authority for a specific application.

(c) A completed application to be designated as a film-lease partner facility shall include:

- 1. An executed lease, sublease, deed, or purchase contract for the production facility. The executed lease or sublease shall have a term that extends for the minimum commitment period based on the anticipated commencement of the commitment period;**
- 2. A detailed floor plan or, if the production facility comprises multiple buildings, a site plan, indicating the uses of each area, the total square footage of the production facility and the square footage of any backlot;**
- 3. Preliminary site plan approval or temporary certificate(s) of occupancy for the production facility, an adopted redevelopment plan by a municipality or municipalities which contemplates the development of the production facility, or an executed redevelopment agreement with a municipality or municipalities for the development of the production facility; and**
- 4. Written acceptance by the applicant of the acquisition by the Authority, at the Authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the Authority and the film-lease partner facility.**
- 5. Any other necessary and relevant information as determined by the Authority for a specific application.**

[b] **(d)** A completed application for digital media tax credits shall include [, but not be limited to, the following]:

1. A preliminary or actual budget demonstrating **the minimum required** [at least \$ 2,000,000 of] total digital media content production expenses [incurred for services performed and goods purchased through vendors authorized to do business in New Jersey] **pursuant to N.J.A.C. 19:31-21.3(b)1i;**

2. If applicable pursuant to N.J.A.C. 19:31-21.6(b)1i or 2i, a breakout of qualified digital media expenses for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County;

[2.] **3.** A breakout of projected digital media content production expenses for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

[3.] **4.** The total number of current full-time or full-time equivalent digital media employees, plans for anticipated new full-time or full-time equivalent employees, and current non-digital media full-time or full-time equivalent employees;

[4.] **5.** A **detailed** description of the [project] **digital media content** [; which must include an overall summary of digital media content; and];

6. If the digital media content relates to any film, a list of all such films;

[5.] **7.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements under N.J.A.C. 19:31-21.6(l)1i through iv, and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)2i through iii; **and**

8. Any other necessary and relevant information as determined by the Authority for a specific application

19:31-21.5 Fees

(a) A non-refundable fee shall accompany every application [for tax credits], as follows:

1. For [projects] **applications** with total **qualified film production expenses or digital media production expenses** of [tax credits] of \$ 1,000,000 or less, the fee to be charged at application shall be [\$ 500.00] **\$100.00**; [and]
2. For [projects] **applications** with total **qualified film production expenses or digital media production expenses** of \$ 1,000,000, **but less than \$6,000,000**, the fee to be charged at application shall be [\$ 2,500.] **\$250.00**;
3. **For applications with total qualified film production expenses or digital media production expenses of \$6,000,000 but less than \$15,000,000, the fee to be charged at application shall be \$2,000.00;**
4. **For applications with total qualified film production expenses or digital media production expenses of \$15,000,000 but less than \$30,000,000, the fee to be charged at application shall be \$5,000.00;**
5. **For applications with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged at application shall be \$20,000.00;**
6. **For applications to be designated as a studio partner, the fee to be charged at application shall be \$10,000.00; and**
7. **For applications to be designated as a film-lease partner facility, the fee to be charged at application shall be \$5,000.00.**

(b) A non-refundable fee shall be paid prior to the approval of the application by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the credit:

- 1. For applications with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged prior to approval shall be \$100.00;**
- 2. For applications with total qualified film production expenses or digital media production expenses of \$1,000,000 but less than \$6,000,000, the fee to be charged prior to approval shall be \$500;**
- 3. For applications with total qualified film production expenses or digital media production expenses of \$6,000,000 but less than \$15,000,000, the fee to be charged prior to approval shall be \$5,000.00;**
- 4. For applications with total qualified film production expenses or digital media production expenses of \$15,000,000 but less than \$30,000,000, the fee to be charged prior to approval shall be \$12,000.00;**
- 5. For applications with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged prior to approval shall be \$50,000.00;**
- 6. For applications to be designated as a studio partner, the fee to be charged prior to approval shall be \$50,000.00; and**
- 7. For applications to be designated as a film-lease partner facility, the fee to be charged prior to approval shall be \$50,000.00.**

[(b)] (c) A non-refundable fee [of 0.5 percent of the approved tax credit amount] shall be paid to the Authority prior to the receipt of the tax credit as follows: [.]

- 1. For approved applicants with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged shall be \$100.00;**
- 2. For approved applicants with total qualified film production expenses or digital media production expenses of \$1,000,000 but less than \$6,000,000, the fee to be charged shall be \$500;**
- 3. For approved applicants with total qualified film production expenses or digital media production expenses of \$6,000,000 but less than \$15,000,000, the fee to be charged shall be \$5,000.00;**

4. For approved applicants with total qualified film production expenses or digital media production expenses of \$15,000,000 but less than \$30,000,000, the fee to be charged shall be \$12,000.00; and

5. For approved applicants with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged shall be \$50,000.00.

[(c)] **(d)** A non-refundable fee [of \$ 1,000] shall be paid to the Authority upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-21.[8] **10 as follows: [.]**

1. For approved applicants with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged shall be \$1,000.00; and

2. For approved applicants with total qualified film production expenses or digital media production expenses of \$1,000,000 or greater, the fee to be charged shall be \$5,000.00.

(e) A studio partner or a film-lease production facility shall pay to the Authority a non-refundable fee of \$5,000 for the first six-month extension and \$7,500 for each subsequent extension to the date the temporary certification of occupancy for the production facility is due pursuant to N.J.A.C. 19:31-21.8(f)3.

(f) A studio partner or a film-lease production facility shall pay to the Authority a non-refundable fee of \$5,000 for each request for any minor administrative changes, additions, or modifications and \$10,000 for each request for any major administrative changes, additions, or modifications, such as those requiring extensive staff time and Board approval, to the designation as a studio partner or a film-lease production facility.

[(d)] **(g)** The full amount of direct costs of [any analysis] **due diligence, including, but not limited to, debarment/disqualification reviews or other analyses** by a third-party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid by the applicant.

19:31-21.6 Tax credit amounts; bonus amount; carryforward of tax credits

(a) [A taxpayer] **An approved applicant**, upon final approval of an application to the Authority and the Director for film tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., [in an amount equal to 30 percent of the qualified film production expenses of the taxpayer, which tax credit may be applied for a privilege period or taxable year commencing on or

after July 1, 2018, but before July 1, 2023] **corresponding to the tax credit vintage year, in an amount equal to:**

1. For applications received prior to the effective date of P.L. 2021, c. 160 (July 2, 2021), 35 percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

2. For applications received on or after the effective date of P.L. 2021, c. 160 (July 2, 2021), the following percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York:

i. 35 percent for applications from film-lease production companies and studio partners.

ii. 30 percent for all other applications.

3. For applications received prior to the effective date of P.L. 2020 (January 7, 2021), c. 156, 30 percent of the qualified film production expenses of the approved applicant not included in paragraphs 1 or 2 above.

4. For applications received on or after the effective date of P.L. 2020, c. 156 (January 7, 2021), the following percent of the qualified film production expenses of the approved applicant not included in paragraphs 1 or 2 above:

i. 40 percent for applications from film-lease production companies and studio partners.

ii. 35 percent for all other applications.

1. For purposes of this subsection (a), wages, salaries and other compensation shall be considered State-wide expenses under paragraphs 3 and 4.

(b) [A taxpayer] **An approved applicant**, upon final approval of an application to the Authority and the Director for digital media tax credits pursuant to N.J.A.C. 19:31-21.7(d), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., **corresponding to the tax credit vintage year** in an amount equal to [20 percent of the qualified digital media content production expenses of the taxpayer which tax credit may

be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023.]:

1. For applications received prior to the effective date of P.L. 2021, c. 367 (January 12, 2022):

- i. 25 percent of the qualified digital media content production expenses of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**
- ii. 20 percent of the qualified digital media content production expenses during a privilege period or taxable year of the approved applicant not included in subparagraph i above.**

2. For applications received on or after the effective date of P.L. 2021, c. 367 (January 12, 2022):

- i. 35 percent of the qualified digital media content production expenses of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**
- ii. 30 percent of the qualified digital media content production expenses during a privilege period or taxable year of the approved applicant not included in subparagraph i above.**

3. For purposes of this subsection (b), wages, salaries and other compensation shall be considered State-wide expenses under subparagraphs 1(ii) and 2(ii).

(c) No tax credit shall be allowed pursuant to this subchapter for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the Director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period or taxable year for which a tax credit authorized pursuant to this subchapter is allowed. **No tax credit shall be allowed for expenses in an application if it has already been included in the calculation of an award pursuant to subsections (a) or (b) above.**

(d) A business that is not a "taxpayer" as defined and used in the "Corporation Business

Tax Act,” N.J.S.A. 54:10A-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but is a business entity that is classified as a partnership for Federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in N.J.S.A. 54:10A-4(c), or a limited liability company formed under the “Revised Uniform Limited Liability Company Act,” N.J.S.A. 42:2C-1 et seq., or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in N.J.S.A. 54:10A-4(c), but otherwise meets all other requirements of this subchapter, shall be considered an eligible applicant [and "taxpayer" as that term is used in this section] **under this program.**

- (e) A business entity that is not a gross income "taxpayer" as defined and used in N.J.S.A. 54A:1-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but otherwise meets all the other requirements of this subchapter, shall be considered an eligible applicant [and "taxpayer" as that term is used in this section] **under this program,** and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subchapter.
- (f) A business entity that is classified as a partnership for Federal income tax purpose shall not be allowed a tax credit pursuant to this section directly, but the amount of the tax credit of a **gross income** taxpayer in respect of a distributive share of entity income shall be determined by allocating to the **gross income** taxpayer that proportion of the tax credit acquired by the entity that is equal to the **gross income** taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the **gross income** taxpayer's taxable year.
- (g) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this [section] **subchapter** directly, but the amount of tax credit of a **gross income** taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the **gross income** taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the **gross income** taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending with the **gross income** taxpayer's taxable year.
- (h) The order of priority in which the tax credit allowed by this section and any other credits allowed by law may be taken, shall be as prescribed by the Director.
- (i) The amount of the tax credit applied under this section against the tax imposed pursuant

to N.J.S.A. 54:10A-5, for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the **corporate business** taxpayer to an amount less than the statutory minimum provided in N.J.S.A. 54:10A-5.

- (j) The amount of the tax credit applied under this section against the tax otherwise due under N.J.S.A. 54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the **gross income** taxpayer to an amount less than zero.

- (k) The amount of tax credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.A. 54:10A-1 et seq. or **N.J.S.A. 54A:1-1 et seq.**, may be carried forward, if necessary, to the seven privilege periods or taxable years following the privilege period or taxable year for which the credit was allowed.

- (l) Notwithstanding any limit in (a) **or** (b) above, the tax credits awarded may be increased pursuant to the following:
 - 1. [A taxpayer] **An applicant** shall be allowed an increase in the tax credit against the tax imposed pursuant to N.J.S.A. 54:10A-5, **or under the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq.**, in an amount equal to two percent of the qualified film or digital media content production expenses, provided that the application is accompanied by a diversity plan, outlining:
 - i. The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent **for applications approved prior to the effective date of these amendments and 25 percent for applications approved thereafter** of the total hired for the qualified film or digital medial production;
 - ii. The efforts made, or to be made, in the recruitment, selection, appointment, promotion, training, and related employment areas to ensure equal employment opportunities for minority persons and women;
 - iii. The specific goals, which may include advertising and recruitment actions, for hiring minority persons and women, including full-time jobs for full-time or full-time equivalent employees in New Jersey for production staff and crew, entry level positions, management positions, and talent-related positions; and
 - iv. Whether the applicant intends to participate, or has participated, in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture

industry and are designed to promote and encourage the training and hiring of minority persons and women.

[2. The tax credit allowed pursuant to (a) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

3. The tax credit allowed pursuant to (b) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.]

2. The amount of the increase to a tax credit allowed pursuant to paragraph 1 above shall increase to four percent of the qualified film or digital media content production expenses of the approved applicant if the diversity plan, in addition to meeting the requirements of paragraph 1 above, outlines specific goals that include hiring no less than 25 percent of persons as performers in the film or digital media production who:

i. Are women or members of a minority group;

ii. Have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and

iii. Are members of a bona fide labor union representing film and television performers.

19:31-21.7 Evaluation process for tax credits; initial approval for tax credits, award of tax credits [; appeals]

(a) Applications **for film tax credits** shall be submitted to the Commission, which, upon review for **content** eligibility, will forward the application to the Authority with the Commission's recommendation.

1. The application **for tax credits** shall be considered by the Authority for initial approval on a first in time basis, subject to **the [an] annual [cap of \$ 75 million for film production tax credits and \$ 10 million for digital production tax credits in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024] caps in N.J.A.C. 19:31-21.11.**

2. At initial approval, the Authority will designate the maximum amount of the tax credit and will assign a tax credit vintage year to the tax credit. **To assist the Authority in reviewing the application, the Authority may retain a third-party consultant, at the cost of the applicant, to review the budget submitted by the applicant to determine if the qualified film or digital media expenses are reasonable based on industry standards.**
3. The **Authority shall issue an** initial approval letter [received by] **to** the [taxpayer] **approved applicant that** will include conditions subsequent to receipt of the tax credit including, but not limited to, the requirement for progress reports and the date by when final documentation pursuant to (b) below is required. **The approval letter shall constitute the non-binding, administrative pre-certification process for potentially eligible projects.** Failure to submit timely[,] periodic reports that demonstrate satisfactory progress or **timely** final documentation may lead to the forfeiture of the tax credit.
 - (b) In general, the final documentation required by (c) below shall be submitted to the Authority no later than four years after the Authority's initial approval if the [taxpayer] **approved applicant** is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the [taxpayer] **approved applicant** is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.
 - (c) Upon completion of total film production expenses or the total digital media content production expenses **for the privilege period or taxable year identified in the initial approval,** [or the incurrence of qualified film production expenses during a privilege period or taxable year that exceed \$ 1,000,000 per production,] the [taxpayer] **approved applicant** shall submit the following final documentation, which the Authority, in consultation with the Director and the Commission, shall process and evaluate:
 1. With respect to a film, evidence satisfactory to the Commission, and written confirmation from the Commission to the Authority that principal photography commenced within the earlier of 180 days from the date of **the** completed application **for the tax credit** [or 150 days from the date of initial approval by the Authority];
 2. **If the approved applicant is a studio partner or film-lease production facility, a certification from the designated studio partner or film-lease partner facility that it has continued to satisfy the requirements of a studio partner or film-lease production facility from the commencement of principal photography;**
 3. [The Authority shall review and approve actual] **Actual** budgets and proof of total and qualified film production expenses or total and qualified digital media content

production expenses, including a listing of the name of the company or person paid; his, her, or its Federal identification number;

4. [and a]A report prepared by an independent certified public accountant licensed in the State verifying the expenses claimed by the **approved** applicant. The report shall be prepared by the independent certified public accountant, pursuant to agreed-upon procedures prescribed by the Authority and the Director[; and].

- (i) The report shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to substantiate the total and qualified film production expenses or the total and qualified digital media content production expenses of the [taxpayer] **approved applicant, and the date of the last total film production expense excluding any deferred compensation payments, including:**

- (1) A review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over \$20,000;

- (2) A review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than \$2,500, but less than \$20,000;

- (3) A review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than \$2,500;

- (4) A review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and

- (5) A review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages;

- (ii) In the report, the approved applicant's qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The approved applicant's qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages in each strata pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages in each strata. The determination shall be provided by the independent certified public accountant in writing to the approved applicant, the

Authority, and the Director, and the approved applicant shall include a copy of the written determination in the filing of a return that includes a claim for a tax credit allowed pursuant to this section;

(iii) The amount of the qualified film production expenses or qualified digital media content production expenses in the report [certification] shall not be increased regardless of additional expenses after the date of the report [certification];

(iv) If the approved applicant is a studio partner and the qualified film production expenses include deferred compensation payments based on work or services provided on a production, the report shall include information necessary and relevant as determined by the Authority to demonstrate such deferred compensation payments.

(v) If the applicant is a film-lease production company, the report shall also include verification of principle photography shoot days as necessary to demonstrate eligibility as a film-lease production company.

[5. The Division shall conduct verification of partners or members of pass through entities, such as partnerships or LLCs].

5. For approved applicants that received initial approval for the production of a reality show:

- i. The report required in (c) above shall include verification of the actual capital investment in the production facility. If the capital investment in the report is less than the minimum eligibility requirement in the definition of film, the approved applicant shall no longer be eligible for tax credits for the production;**
- ii. The temporary certificate of occupancy;**
- iii. A detailed floor plan, indicating the uses of each area, of the production facility;**
- iv. The executed deed, lease, or sublease evidencing site control. If the approved applicant is a tenant and the lease or sublease has a term, including renewals and options, of less than the minimum eligibility requirement in the definition of film, the approved applicant shall no longer be eligible for tax credits for the production; and**
- v. Any other information necessary to determine compliance with the requirements of a reality show;**

[3.] **6.** With respect to a film, evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31-

21.3(a)3;

[4.] 7. If the **approved** applicant was initially approved for a bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)[1], evidence of good faith efforts to undertake the diversity plan. The bonus amount shall not be included in the amount of the final approval if the applicant fails to submit satisfactory evidence to the Authority and the Division;

8. If the approved applicant is a film-lease production company, the executed lease, sublease, or license to occupy production space in a film-lease partner facility;

9. A certification from the approved applicant that the information provided pursuant to this subsection (c) is true under the penalty of perjury; and

10. Any other information necessary for the Authority and the Director to determine compliance with this program.

(d) The Authority, in consultation with the Division and Commission, shall determine final approval of the tax credit in an amount based on the Authority's determination of the total and qualified film production expenses or total and qualified digital media content production expenses reported in the independent certified public accountant's [certification] **report**, but in no event shall the tax credit be greater than the amount stated in the Authority's initial approval. The Authority shall provide, in writing to the [taxpayer] **approved applicant**, the determination of the expenses, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

(e) If the Authority has approved the application, the Authority shall notify the Division of the final approval. The Division shall then issue the tax credit certificate to the **approved applicant**. The [taxpayer's] **approved applicant's** use of the tax credit shall be limited by N.J.A.C. 19:31-21.[9]11(a) or (b), as applicable.

(f) If a studio partner received a tax credit for qualified film production expenses that included deferred compensation payments based on work or services provided on a production, the studio partner shall submit a supplemental report prepared by a certified public accountant pursuant to agreed-upon procedures prescribed by the Authority and the Director no later than two years after the date on which the production concludes as established by the date of the last total film production expense excluding any deferred compensation payments.

[(f) An applicant may appeal the Authority's initial approval or denial under (a) above and final approval or denial under (c) above by submitting, in writing to the Authority, within 20 calendar days from the date of the Authority's action, an explanation as to how the applicant

has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1. Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.]

19:31-21.8 Evaluation process and designation of studio partner and film-lease partner facility

(a) An application for designation as a studio partner or a film-lease partner facility shall be submitted to the Authority.

(b) The completed application for designation as a studio partner or film-lease partner facility shall be considered by the Authority for approval on a first in time basis. If interest in studio partner or film-lease partner facility designation so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process

whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date.

(d) To assist the Authority in designating a studio partner or film-lease partner facility, the Authority may employ an independent consultant, at the cost of the applicant, or may consult with the Commission.

(e) Upon review of the application, the Authority's Board shall consider whether to designate the applicant as a studio partner or film-lease partner facility pursuant to N.J.A.C. 19:31-21.3(d) and (e) respectively. The designation shall expire at the end of the studio partner or film-lease partner facility's commitment period.

1. Effective upon designation as a studio partner, a film production company shall be eligible for a credit as a studio partner pursuant to this subchapter, provided the film production company otherwise complies with the eligibility requirements of the program.

2. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the Authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(f) Following approval by the Authority's Board, the Authority shall require the applicant to execute and return an approval letter to the Authority. The Board's designation shall be subject to conditions subsequent set forth in the approval letter. The conditions in the approval letter must be met to retain the designation.

1. The conditions of approval shall include, but not be limited to, submission of periodic progress reports; executed financing commitments, if applicable; and evidence of site plan approval or executed redevelopment agreement with a governmental entity, as applicable; and evidence of site control of the production facility within one year from the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.

2. As set forth in N.J.A.C. 19:31-21.12, the conditions shall also include the requirement that construction at the production facility complies with the prevailing wage and affirmative action requirements; and that the production facility does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, et seq.

3. A studio partner or film-lease partner facility shall submit the final floor plan, or site plan if there are multiple buildings, indicating the uses and square footage of each area and one or more temporary certificates of occupancy for the minimum required square footage within 36 months from the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.

4. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's designation shall expire if the approved applicant does not

provide the required documents within the period of time prescribed in this subsection (e).

(g) When deciding whether to make an equity investment in a film-lease partner facility and the terms of such investment, the Authority shall consider such factors as the financial structure of the production facility, the risk of the investment in the production facility, developer contributed capital or equity, the magnitude of State or other governmental support, the reasonable and appropriate return on investment to the developer and the Authority, and the terms offered to other equity owners and investors.

(h) A studio partner shall execute an award agreement that shall include, but not be limited to:

1. The commencement of the commitment and eligibility periods; and
2. An agreement that the studio partner shall maintain the lease or ownership of the production facility for the duration of the commitment period. The studio partner shall:
 - i. Not lease, sublease, or license any part of the production facility such that the studio partner occupies less than the minimum amount of square feet for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period;
 - ii. Not sell any part of the production facility, provided that a studio partner may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet; and
 - iii. Unless otherwise allowed in this subchapter, not receive any benefits from this program for any activity of its tenant or subtenant and the tenant or subtenant shall not receive any benefits from this program from the studio partner's designation.

(i) A film-lease partner facility shall execute an award agreement that shall include, but not be limited to, the following:

1. The commencement and length of the commitment period; and
2. An agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility for the duration of the commitment period. The studio partner shall:
 - i. Not lease, sublease, or license any part of the production facility for uses other than film production uses such that the film-lease partner facility occupies less than the minimum amount of square feet for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period, provided that the film-lease partner facility may

execute at least a ten-year lease to a studio partner if the film-lease partner facility otherwise complies with the eligibility requirements of the program;

ii. Absent the Authority's written consent, not sell any part of the production facility, provided that a film-lease partner facility may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet; and

iii. Unless otherwise allowed in this subchapter, not receive any tax credits under this program for any activity of its occupant, tenant, or subtenant.

(j) The award agreement for a studio partner and a film-lease partner facility shall also include:

- 1. A method for the approved applicant to certify that it has met the eligibility requirements of the program;**
- 2. A provision permitting an audit of evidence and documentation of the approved applicant supporting any submissions demonstrating eligibility and site visit, as the Authority deems necessary;**
- 3. A provision permitting the Authority to amend the agreement;**
- 4. A provision establishing the conditions under which the Authority, the approved applicant, or both parties, may terminate the agreement;**
- 5. Indemnification and insurance requirements from the approved applicant;**
- 6. Events that would trigger forfeiture, reduction, or recapture of tax credits, including, but not limited to, provisions in this subchapter; and**
- 7. Default and remedies, including, but not limited to, a default if an approved applicant made a material misrepresentation on its application.**

19:31-21.9 Recapture and reduction of tax credits

(a) If a studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a studio partner, the authority shall recapture the portion of the tax credit from the studio partner that was only available to the studio partner by virtue of the studio partner's designation as a studio partner, and all the studio partner's films for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

(b) If a film-lease partner facility fails to operate the production facility developed, purchased, or leased as a condition of designation as a film-lease partner facility for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a film-lease partner facility, the authority shall recapture the portion of the tax credit from the film-lease partner facility that was only available to film-lease production companies by virtue of the film-lease partner facility's designation as a film-lease partner facility, and all films from film-lease production companies that relied on the film-lease partner facility designation for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

(c) If an approved applicant has received tax credits on the basis of deferred compensation and the supplemental report from the independent certified public accountant does not evidence actual payment of the deferred compensation, the Authority shall recapture the amount of the tax credit that was based on the projected deferred compensation. If the approved applicant fails to submit the supplemental report by the date required, the Authority shall recapture all of the tax credit based on the projected deferred compensation.

(d) If, at any time, the Authority determines that an approved applicant made a material misrepresentation on the approved applicant's application or any submission pursuant to this program, the approved applicant shall forfeit, and the Authority may recapture any or all of, the tax credits awarded under the program, which shall be in addition to any other remedies in any approval letter, award agreement, and any criminal or civil penalties to which the approved applicant and the respective officer may be subject.

(e) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-21.[8]10 Application for tax credit transfer certificate

- (a) Tax credits, upon receipt thereof by [a taxpayer] **an approved applicant** from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, subject to the cumulative total in N.J.A.C. 19:31-21.[9]11(a), to any other taxpayer who may have a tax liability pursuant to N.J.S.A. 54:10A-5 or 54A:1-1 et seq. [A taxpayer] **An approved applicant** shall apply to the Authority and the Director for a tax credit transfer certificate, in lieu of the [business] **approved applicant** being allowed any amount of the credit against the tax liability of the [taxpayer] **approved applicant**. Such application shall identify the specific tax credits to be transferred, the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the [taxpayer] **approved applicant**, naming the transferee. The certificate issued to

the [business] **approved applicant** shall include a statement waiving the [taxpayer's] **approved applicant's** right to claim that amount of the tax credit against the taxes that the [business] **approved applicant** has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the tax credits pursuant to N.J.A.C. 19:31-21.6.

- (b) The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the [taxpayer] **approved applicant** of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the [taxpayer] **approved applicant** shall submit to the Authority an executed form of standard selling agreement that evidences that the consideration received by the [taxpayer] **approved applicant** is not less than 75 percent of the transferred tax credit.
- (c) In the event that the [taxpayer] **approved applicant** is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31- 21.6.
- (d) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.
- (e) **The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:**

1. The name of the transferrer;

2. The name of the transferee;

3. The value of the tax credit transfer certificate; and

4. The State tax against which the transferee may apply the tax credit.

19:31-21.[9]11 Cap on total credits

- (a) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a) **shall be as follows:**

- 1. Pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), to approved applicants, other than studio partners and film-lease production companies, the [shall not exceed a] cumulative total shall not exceed [of \$75,000,000] \$100,000,000 in fiscal**

year 2019, and in each fiscal year thereafter prior to fiscal year [2024] **2040**, as indicated by the **tax credit vintage period** [fiscal year in which the tax credit was initially approved], to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

2. For studio partners and film-lease production companies:

i. Pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), except as provided in subparagraphs ii and iii below, the cumulative total shall not exceed \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of \$150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

ii. Pursuant to N.J.S.A. 34:1B-362(d), notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the Authority pursuant to N.J.S.A. 34:1B-362(b)(1)(f) to the "New Jersey Aspire Program Act," N.J.S.A. 34:1B-322 through 34:1B-335, and the "Emerge Program Act," N.J.S.A. 34:1B-336 through 34:1B-348, \$250,000,000 shall be made available for tax credits allowed in fiscal years, 2023, 2024, and 2025.

iii. Pursuant to N.J.S.A. 34:1B-362(b)(1)(i), N.J.S.A. 54:10A-5.39b(e)(1), and N.J.S.A. 54A:4-12b(f)(1), beginning in fiscal year 2023, in addition to the cumulative total tax credits made available for studio partners pursuant to subparagraphs i and ii above, up to an additional \$400,000,000 may be made available annually to studio partners and \$250,000,000 for film-lease production companies, in the discretion of the Authority, for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, from the funds made available pursuant to N.J.S.A. 34:1B-362(b)(1)(i) from the tax credits made available pursuant to N.J.S.A. 34:1B-362(f) to the "New Jersey Aspire Program Act," N.J.S.A. 34:1B-322 through 34:1B-335, and the "Emerge Program Act," N.J.S.A. 34:1B-336 through 34:1B-348, not including tax credits awarded for transformative projects.

3. If the applicable cumulative total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(a) exceeds the amount of tax credits available in that fiscal year, then [taxpayers] applicants who have first applied for and have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the Authority, provided the applications otherwise satisfies the requirements of the program, and shall be allowed [tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the

order in which they have submitted an application,] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(a) are not in excess of the amount of applicable credits available.

- (b) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director pursuant to N.J.A.C. 19:31-21.6(b) shall not exceed a cumulative total of [~~\$ 10,000,000~~] **\$30,000,000** in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year [2024] **2040**, as indicated by the tax credit vintage year, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to **the "New Jersey Gross Income Tax Act,"** N.J.S.A. 54A:1-1 et seq. If the total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(b) exceeds the amount of tax credits available in that year, then [taxpayers] **applicants** who have first applied for and who have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(b) are not in excess of the amount of credits available.
- (c) **Notwithstanding any provision of subsection (a) above to the contrary, for any fiscal year in which the amount of tax credits approved to studio partners, film-lease production companies, or approved applicants other than studio partners and film-lease production companies pursuant to N.J.A.C. 19:31-21.6(a), N.J.S.A. 54:10A-5.39b(1)(a), and N.J.S.A. 54A:4-12b(2)(a) is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for studio partners, film-lease production companies, or approved applicants other than studio partners and film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the approved applicant is not able to redeem or transfer to another taxpayer under this subchapter, and shall increase the cumulative total amount of tax credits permitted to be approved for studio partners, film-lease production companies, or applicants other than studio partners and film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.**

(d) **Notwithstanding any provision of subsection (b) above to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to N.J.A.C. 19:31-21.6(b), N.J.S.A. 54:10A-5.39b(1)(b), and N.J.S.A. 54A:4-12b(2)(b) is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the approved applicant is not able to redeem or transfer to another taxpayer under this section and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.**

(e) **Notwithstanding any provision of this section or other law to the contrary, if a film production company designated as a studio partner ceases to qualify for its designation as a studio partner and becomes designated as a film-lease partner facility, the Authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for film-lease production companies in each fiscal year by a corresponding amount equal to the lesser of**

1. One third and

2. The greater of the percentage of the studio partner's number of film tax credit applications out of the volume of applications submitted by studio partners and film-lease production companies, the percentage of the cumulative total amount of tax credits approved for the studio partner out of the cumulative total amount of tax credits approved to studio partners and film-lease production companies in the prior fiscal year, and the percentage of the studio partner's square footage out of the total square footage of production facility space occupied in the State by studio partners and production facilities.

19:31-21.[10]12 Affirmative action; and prevailing wage

(a) **The Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, [will apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program] shall apply to the film and the qualified digital media content production expenses, including, but not limited to, the following:**

1. Construction contracts for work performed on or after the Authority's initial approval; and

2. Construction contracts for work performed before the application and after the effective date of these amendments.

(b) For studio partners and film-lease partner facilities, the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to work performed at the production facility after the effective date of these amendments and the Authority's approval of the designation.

19:31-21.13 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Authority's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Authority action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 et seq.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Unless the application was submitted in response to a competitive application process, the Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court of New Jersey, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-21.[11]14 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.