



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Special Adoption and Concurrently Proposed Rule Amendments and New Rules:
New Jersey Film & Digital Media Tax Credit Program (N.J.A.C. 19:31-21)

Request:

The Members are asked to approve the attached special adoption concurrently proposed rule amendments and new rules for the New Jersey Film & Digital Media Tax Credit Program based on statutory amendments 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; and authorize staff to (a) submit for publication in the New Jersey Register and (b) submit as final adopted rules for publication in the New Jersey Register if no substantive comments are received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

Background:

The film tax credit program was first created in 2005 by P.L. 2005, c. 345 (“Chapter 345”). Since that time, it has been repeatedly amended, sunset, and ultimately reinstated in 2018 by P.L. 2018, c. 56 (“the Garden State Film and Digital Media Jobs Act” or “Film and Digital Media Act”) and recodified at N.J.S.A. 54:10A-5.39b and N.J.S.A. 54A:4-12b. It was significantly amended by the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L. 2020, c. 156, and additional laws. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey. These specially adopted concurrently proposed rule amendments and new rules revise the current 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.

On January 21, 2020, Governor Murphy signed P.L. 2019, c. 506 (“Chapter 506”). The law extended the availability period of the tax credits through 2028, increased the annual film tax

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credit cap to \$100 million and created a process for the Authority to certify any unused credit amounts in one fiscal year to be used in the subsequent year.

On January 7, 2021, Governor Murphy signed the ERA into law. The ERA created a package of tax incentive, financing, and grant programs to address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy, including amendments to the New Jersey Film & Digital Media Tax Credit Program. Most significantly, these amendments created “film partners” and “film-lease partners.”

On July 2, 2021, Governor Murphy signed P.L. 2021, c. 160 (“Chapter 160”), extending the program through 2034, adding a definition of “incurred in New Jersey,” removing “film partner” and adding “studio partner,” restricting the use of unredeemed and unused credits in subsequent years, providing additional specification to the Authority’s review of the taxpayer’s required certified public accountant report, and increasing the tax credit percentage and bonus amounts available for film projects.

On January 12, 2022, Governor Murphy signed P.L. 2021, c. 367 (“Chapter 367”). This law reestablished the Authority’s ability to certify unused and unredeemed tax credits from one State Fiscal Year for use in the subsequent State Fiscal Year. It also created an additional two percent diversity bonus for productions that submit a diversity plan, which includes specific goals for hiring certain local, on-screen talent. Chapter 367 also increased the tax credit percentage for Digital Media productions from 20 percent to 30 percent, while increasing the allocation from \$10 million to \$30 million annually.

In June 2022, the NJEDA Board approved proposed rule amendments and proposed new rules to implement P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367. On August 1, 2022, the NJEDA published proposed amendments and proposed new rules in the New Jersey Register. See 54 NJR 8(1). Significant public comments were received. Thereafter, legislative changes were enacted and the rules proposal was allowed to expire so that the rules attached to this memo that are responsive to new legislative changes could be prepared.

On July 6, 2023, Governor Murphy signed P.L. 2023, c. 97 (“Chapter 97”), which extended the program through 2039 and removed the “film-lease partner” allocation category and created the “film-lease production company” allocation category. This new category has an annual allocation of \$150 million. The “studio partner” allocation was increased from \$100 million to \$150 million as well. Chapter 97 also created the “film-lease production facility” designation, available to up to three large studios who meet certain requirements and increased the tax credit amount available for “studio partners” and “film-lease production companies” to 40 percent. In addition, this newest legislation also authorized NJEDA to adopt immediately effective (“special adoption”) rules to implement the statutory changes.

Summary of Rules Changes:

The attached rule proposal includes numerous changes based on direct statutory amendments newly reflected in rules. In addition to the legislative changes, the new rules contain several

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changes based on Staff's proposals for policy decisions. These decisions will impact the implementation and operation of the program. The proposed policy decisions are described below:

Based on statutory changes requiring the Authority to continue approving projects even when allocation for the current state fiscal year have been exhausted, the definition of "vintage year" is amended to reflect instances where a project is approved in one state fiscal year while the award is based on a subsequent fiscal year's allocation. The proposed policy decision is to make the vintage year of a credit be the tax year of the applicant when allocation is first available.

The legislation allows tax credits for "deferred compensation." The proposed policy decision is to make clear what types of compensation can be considered when calculating the amount of deferred compensation an individual receives.

The definition of a "film" is amended to make clear that documentary feature films and documentary television shows may be considered eligible content. The statutory definition does not address them specifically. The proposed policy interpretation is that a film or television show or series may be a documentary and still be eligible. The new language makes this clear.

The new rules include a definition for "homeowner" and "personal residence". These definitions are necessary because the new legislation includes as qualified film production expenses the costs paid to a homeowner for use of their personal residence under certain circumstances. The proposed definitions include policy decision as to who is a homeowner and what types of dwellings or structures can be considered when evaluating qualifying payments to use these structures for filming. These definitions exclude multi-family residential structures with more than four units and any residential units someone other than the homeowner occupies. It is expected that these excluded structures would be operated by a business who could provide proof of vendor registration.

The definition of "principal photography" is amended to remove the requirements for lead actors be involved in the shooting to qualify as principal photography. The definition now more aligns with industry norms and requires the director to be present on set. Additionally, the new rules include an express requirement that the film must have at least one principal photography day shot within New Jersey.

These new rules include a new definition for "shoot day," which was added to provide clarity on what the Authority would consider as a shoot day for the purposes of qualifying certain projects submitting applications as film-lease production companies. The applicants need to provide evidence of meeting the requirements of shooting at least 50 percent of the total shoot days in New Jersey and 50 percent or more of their New Jersey shoot days need to be at a designated film-lease partner facility.

The threshold for the diversity hiring goal a production must meet to be eligible for the diversity bonus has been increased in the attached rules. The minimum goal must be at least 25 percent, up from 15 percent. Staff (including the Authority's Diversity Equity and Inclusion team) proposes

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to increase the threshold to better align with industry norms. The Authority has seen an increase in applicants seeking the bonus, and a majority of applicants have been easily exceeding the initial 15 percent requirement.

Designations for studio partners and film-lease partner facilities are limited by statute to only three each. Because of this limit, Staff proposes to require projects seeking the designations to be as close to operational as possible. Thus, the new rules include the requirement that the potential projects must have either site plan approval or a redevelopment agreement in place before applying, and they must commit to being able to obtain a temporary certificate of occupancy (TCO) for the first 250,000 sqft of the film facility within 36 months of approval. Failure to provide this TCO would result in the forfeiture of the designation.

Instead of annual reporting and ongoing monitoring of the studio partner and film-lease partner facilities, each subsequent project application submitted on the basis of either a studio partner or film-lease partner facility designation would be required to include a signed certification from the owner of the studio partner facility or film-lease partner facility, that the designee remains in compliance with the requirements of the program.

The new rules contain specific recapture language for studio partners and film-lease production companies. The new legislation requires that the Authority recapture from a studio partner that fails to comply with program requirements, all additional tax credits that the studio partner received on the basis of its designation. Additionally, the legislation requires that the termination of the approval of all studio partner film tax credits for films that have been approved but have not submitted its final report. Staff proposes making clear that the studio partner's designation will be revoked in such case and treating film-lease production facilities the same. Although a film-lease production facility does not receive tax credits, the film-lease production facility designation may be the basis for additional tax credits for film-lease production companies.

These new rules include the requirement that any construction contracts entered into by a film project applying for assistance to comply with all prevailing wage, affirmative action, and contractor registration requirements, even if the project was already completed before receiving approval. Additionally, all construction activity completed by studio partner or film-lease partner facilities after the later of the designation or the effective date of these rules would also have to comply with Authority prevailing wage requirements.

Compliance with Executive Order 63

In accordance with Executive Order 63, which ensures outreach efforts are made to the public and affected stakeholders during rule drafting, the Authority posted draft rule amendments and draft new rules to its website at <https://www.njeda.gov/economicrecoveryact/program-specific-feedback/> where the public is able to submit written feedback on Authority programs.

In addition, the Authority issued a news release advising the public that the draft Film and Digital Media Tax Credit Program rule amendments and draft new rules were available for review and invited informal input. Furthermore, several known stakeholder groups were contacted directly by the Authority and notified that the draft was available for feedback via the Authority's website.

Chief Compliance Officer Certification

Pursuant to the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, “review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse.” N.J.S.A. 34:1B-365.

Jignasa Desai-McCleary has been designated the CCO. In that capacity, Mrs. Desai-McCleary has reviewed the special adoption and concurrently proposed rule amendments and new rules for the New Jersey Film & Digital Media Tax Credit Program and is prepared to sign the certification, subject to the Board taking action to approve the same and expiration of the Governor’s veto period for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Recommendation

The Members are requested to approve the attached special adoption and concurrently proposed amendments to the rules and new rules for the New Jersey Film & Digital Media Tax Credit Program based on statutory amendments 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, and authorize staff to (a) submit for publication in the New Jersey Register and (b) submit as final adopted rules for publication in the New Jersey Register if no substantive comments are received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

Tim Sullivan
Chief Executive Officer

Prepared by:
Matt Sestrich

Attachments: Appendix A – Specially Adopted and Concurrently Proposed Rule
Amendments and New Rules – New Jersey Film & Digital Media Tax Credit
Program

Appendix A – Specially Adopted and Concurrently Proposed Rule

Amendments and New Rules – New Jersey Film & Digital Media Tax Credit

Program

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Garden State Film and Digital Media Jobs Program

Proposed Amendments: N.J.A.C. 19:31-21.1 through 21.10

Proposed New Rules: N.J.A.C. 19:31-21.8, 21.9, and 21.14

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: 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.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-____.

Submit written comments by _____, 2024, to:

Alyson Jones, Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
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Trenton, NJ 08625-0990
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Take notice that 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, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has specially adopted the following amendments and new rules to

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implement the provisions of The Garden State Film and Digital Media Jobs Act, N.J.S.A. 54:10A-5.39b and 54A:4-12b.

The specially adopted amendments and new rules became effective on February 26, 2024, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted amendments and new rules shall be effective for a period not to exceed 180 days from the date of filing, that is, until August 26, 2024.

Concurrently, the provisions of the amendments and new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of readoption before August 26, 2024, the expiration date is extended 180 days to February 22, 2025, pursuant to N.J.S.A. 52:14B-5.1c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before February 22, 2025.

The specially adopted concurrently proposed amendments and new rules follow.

Summary

The Garden State Film and Digital Media Jobs Act, N.J.S.A. 54:10A-5.39b and 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.

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the existing rules as well as new rules to incorporate provisions of recent statutory revisions, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021,

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c. 367; and P.L. 2023, c.97 and to incorporate industry and stakeholder input received via comments both in the prior formal rulemaking and the informal rulemaking process engaged in by the Authority prior to this rulemaking.

Summary of the Rulemaking and Legislative History

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. Since that time, it has been repeatedly amended, sunset, reinstated in 2018 by P.L. 2018, c. 56 as “the Garden State Film and Digital Media Jobs Act” and recodified at N.J.S.A. 54:10A-5.39b and N.J.S.A. 54A:4-12b, and significantly amended in the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, and additional bills. These specially adopted concurrently proposed 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.

On August 1, 2022, the NJEDA published proposed amendments and proposed new rules for the Garden State Film and Digital Media Jobs Program rules, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; and P.L. 2021, c. 367 in the New Jersey Register. See 54 NJR 8(1). As summarized below significant public comments were received.

Thereafter, Legislative changes were enacted. On July 6th, 2023, Governor Murphy signed S3748 signed into law as P.L. 2023, c. 97. This new law modified the Garden State Film and Digital Media Program in various ways including:

- extending the privilege period through 2039 and increasing the amount of tax credits available;
- replacing the concept of “film-lease partners” with a new concept of “film-lease production companies,” and creating the concept of a “film-lease partner facility”;
- expanding the definitions of “film” and “qualified film production expenses,” adding definitions of “commitment period” and “eligibility period,” and amending the definitions of “film” and “studio partner,” and “full-time or full-time equivalent employee”;

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- enumerating certain rescind and recapture penalties for “studio partners”;
- revising requirements related to the diversity plan credit;
- making certain changes to deferred compensation payments; and
- clarifying provisions related to filming at a personal residence.

In addition, P.L. 2023, c. 97 authorized NJEDA to specially adopt rules to be immediately effective for a period not to exceed 180 days from the date of the filing. The August 1, 2022 proposal was superseded by the legislation and allowed to expire. This new proposal incorporating the legislative changes and comments received follows.

Summary of the Public Comments and Agency Responses

In response to the August 1, 2022, notice of proposal at 54 N.J.R. 1530(a), the Authority received comment from Kathy Banuelos, Senior Vice President, State Government Affairs, Motion Picture Association, John C. Biggins, Executive Managing Director, Biggins Lacy Shapiro and Company, LLC., Jason Hariton, EVP & Chief Real Estate Officer, MBS Group, Nick Maniatis, Director Studio and Production Affairs – North America, Christine Cascio Peluso, Esq., Tax Credits US and Fred Siegel, CPA.

COMMENT: The commenter requested that the Authority expedite approvals of initial applications, specifically related to tax clearance and good standing determinations.

RESPONSE: The Authority is determined to complete reviews as expeditiously as possible; however, the Authority obtains tax clearances from every applicant and to determine that applicants are in good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of the Treasury, and the New Jersey Department of Environmental Protection.

COMMENT: The commenter indicated that the requirements that the construction at the production facility comply with the prevailing wage and affirmative action requirements should

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only apply to the work performed by the studio partner and not its's landlord or potential landlord under an executed lease or lease term sheet.

RESPONSE: Revised N.J.A.C. 19:31-21.12 sets forth that, 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.

COMMENT: Several of the commenters inquired as to the necessity of the publication of certain information related to tax credit transfers.

RESPONSE: The requirement is amended as part of this rulemaking at N.J.A.C. 19:31-21.10(e).

COMMENT: The commenter requested removal of the requirement that the information provided by the taxpayer pursuant to N.J.A.C. 19:31-21.4 be submitted with a certification that it is true as the information may include discrepancy between what is truthfully submitted and what is ultimately approved by the Authority.

RESPONSE: Information provided to the Authority regarding eligible costs that is thought to be true at the time of submittal, but is subsequently deemed ineligible by the Authority, would not be considered an untruthful.

COMMENT: The commenter requested an expansion of the list of executives qualified to provide the report required by N.J.A.C. 19:31-21.4. The commenter also indicated that the information the Authority requires regarding estimates of future productions activities will be projections only and may be subject to change.

RESPONSE: This requirement has been removed as part of this rulemaking.

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COMMENT: The commenter suggested clarifying the definition of “qualified film production expenses” at N.J.A.C. 19:31-21.2.

RESPONSE: The Authority agrees with this comment and has clarified the definition of “qualified film production expenses” as suggested by the commenter in this rulemaking.

COMMENT: The commenter requested an amendment to the rules to expand the definition of “combined group.”

RESPONSE: “Combined group” is a defined term utilized in other programs and by other State Agencies; therefore, its meaning cannot be changed for this program.

COMMENT: The commenter requested timely processing of applications for the studio partner designation.

RESPONSE: The Authority processes applications in as timely a manner as possible on a first-in-time basis. The Authority may institute a competitive process if interest in the studio partner designation so warrants.

COMMENT: The commenter requested an amendment to the definition of “studio partner” to expand the designation to those other than content creators.

RESPONSE: The Authority is bound by the statutory definition of “studio partner” at N.J.S.A. 54:10A-5.39b(h) and N.J.S.A. 54A:4-12b(h).

COMMENT: The commenter requested additional time to satisfy the requirements of the studio partner designations beyond the thirty-six-month time period in addition to the potential for two six-month extensions.

RESPONSE: The Authority has determined that the time period set forth at N.J.A.C. 19:31-21.8 is sufficient to satisfy the requirements of the studio partner designations. There are a limited

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number of designations and the timeframes set forth at N.J.A.C. 19:31-21.8 are necessary to ensure that the studio partner designations are utilized, and construction of production facilities is completed in a timely manner.

COMMENT: The commenter suggested amendment to the requirement that the studio partner remain in compliance with the award agreement, including maintaining minimum site control of the facility as a result of sale, sublicense, and/or sublease of the facility.

RESPONSE: The requirement to maintain the minimum site control pursuant to the award agreement is necessary to ensure that the applicant can fulfil the requirements of the Program throughout the commitment period. The minimum site control requirement does not wholly prohibit sale, sublicense, or sublease of the facility. However, to be eligible for and remain in compliance with the designation, any modifications of site control will require the prior consent and approval of the Authority. A studio partner may sublease in certain circumstances pursuant to N.J.A.C. 19:31-21.8(h)2.

COMMENT: The commenter requested that the Authority add “an executed lease term sheet” in addition to ownership or a lease.

RESPONSE: The Authority requires a completed application to be designated as a studio partner to include 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. See N.J.A.C. 19:31-21.4(b)1.

COMMENT: The commenter requested that the Authority accept a letter of intent in lieu of the required lease required by N.J.A.C. 19:31-21.2

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RESPONSE: Due to the limited number of designations, the Authority requires more substantial evidence of a commitment than a letter of intent; however, a lease with contingencies is acceptable. Site control by a studio partner applicant is required.

COMMENT: The commenter inquired as to the commencement of the commitment period and the requirement to maintain site control throughout the commitment period as evidenced by a lease for the appropriate time frame.

RESPONSE: “Commitment period” is defined by statute at N.J.S.A. 54:10A-5.39b(h), N.J.S.A. 54A:4-12b(h). The commencement of the “commitment period” is clarified in this rulemaking, see N.J.A.C. 19:31-21.2.

COMMENT: The commenter requested amendment to the application of the Columbus Circle 30-mile radius tax credit reduction at N.J.A.C. 19:31-21.4.

RESPONSE: The Authority is bound by the statutory requirement to apply the Columbus Circle 30-mile radius tax credit reduction found at N.J.A.C. 19:31-21.4 pursuant to N.J.S.A. 54A:4-12b(2) and N.J.S.A. 54:10A-5.39b(2).

COMMENT: The commenters asked for clarification of the reduction provisions for film-lease partners and specifically the impact of non-compliance with the requirement to expend the minimum annual average of qualified film production expenses at N.J.A.C. 19:31-21.2.

RESPONSE: This is removed as part of this rulemaking pursuant to statutory amendments.

COMMENT: The commenter requested clarification on the determination of the completion of a film.

RESPONSE: The completion of a film is conditioned upon the approval of the New Jersey Motion Picture and Television Commission (“Commission”). The Commission is required to take into account factors including, but not limited to, the budget and audience of the film,

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marketing materials promoting the State as a film and entertainment production destination, 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. See N.J.A.C. 19:31-21.3(a)3, N.J.S.A. 54:10A-5.39b(a)1(c) and N.J.S.A. 54A:4-12b(a)1(c).

COMMENT: The commenter requested clarification of the meaning of “authorized to do business in New Jersey.”

RESPONSE: The term “vendor authorized to do business in New Jersey” is amended by this rulemaking. See N.J.A.C. 19:31-21.2, N.J.S.A. 54A-4-12b(h) and N.J.S.A. 54:10A-5.39b(h).

COMMENT: The commenter requested clarification of what costs may be “incurred in New Jersey” specifically related to real property and intangible property when included in qualified film production expenses.

RESPONSE: The terms “incurred in New Jersey,” “homeowner,” and “personal residence” are added and/ or amended by this rulemaking to clarify the inclusion of certain real property and exclusion of intangible property at N.J.A.C. 19:31-21.2. See N.J.S.A. 54A-4-12b(h) and N.J.S.A. 54:10A-5.39b(h).

COMMENT: The commenter requested an expedited qualification of certified public accountants pursuant to N.J.A.C. 19:31-21-7(d).

RESPONSE: The Authority is currently developing this process, which is beyond the scope of the Program rules.

COMMENT: The commenter requested that the Authority amend the certification requirement of the certified public accountant report required to be submitted upon application for film tax credits. o N.J.A.C. 19:31-21,7(c)6).

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RESPONSE: The Authority requires that the information provided in the certified public accountants report to be certified to ensure the truthfulness and accuracy of the information.

COMMENT: The commenter requested the publication of the currently available tax credit funding under the program.

RESPONSE: The Authority publishes this information quarterly on the Authority's website. Authority staff are able to provide more frequent updates to this information upon request.

COMMENT: The commenter requested confirmation of the amount of funding available to studio partners under the Program beginning in 2025 pursuant to N.J.A.C. 19:31-21.11.

RESPONSE: The caps on funding are amended in this rulemaking pursuant to statutory amendment N.J.S.A. 34:1B-362. The Authority publishes this information quarterly on the Authority's website. Authority staff are able to provide more frequent updates to this information upon request.

COMMENT: The commenters objected to the fee amounts of the program as established at N.J.A.C. 19:31-21.5.

RESPONSE: The Authority has amended N.J.A.C. 19:31-21.5 to reduce fees while still offsetting the cost to the Authority of administering the Program.

COMMENT: The commenter requested clarification as to whether certain services performed within the 30-mile radius described in N.J.A.C. 19:31-21.6(a)2 that are qualified production expenses qualify for a credit rate of 35 or 30 percent.

RESPONSE: Qualified wage and salary payments made to a loan out company or an independent contractor providing services used directly in a production and qualified wages of

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W2 employees are not included in the reduction to 30 percent and are eligible to receive 35 percent as long as they are incurred in New Jersey.

COMMENT: The commenter requested that the Authority clarify and distinguish the meaning of “non-payroll expenses” and “qualified wages.”

RESPONSE: “Non-payroll expense” includes expenses outside of compensation. “Qualified wages” includes all wages subject to New Jersey gross income tax, including payments made to loan out companies and independent contractors performing services directly related to the production.

Summary of the Amendments and New Rules

N.J.A.C. 19:31-21.1 Applicability and Scope

The amendments revise the section to include citations to statutory revisions to the Garden State Film and Digital Media Jobs Act.

N.J.A.C. 19:31-21.2 Definitions

The amendments define certain new terms used in this subchapter, and incorporate terms defined at P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c. 97. Specifically, the following terms are amended to support the Program: “Commission,” “digital media content,” “film,” “full-time or full-time equivalent employee,” highly compensated individual,” “independent contractor,” “loan out company,” “primary place of business,” “principal photography,” “qualified digital media content production expenses,” “qualified film production expenses,” “selling business,” “taxable year,” “tax credit transfer certificate,” “tax credit vintage year,” “total digital media content production expenses,” “total film production expenses,” and “vendor authorized to do business in New Jersey.” The amendments also create additional terms, including: “applicant,” “approved applicant,” “commitment period,” “deferred compensation,”

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“eligibility period,” “film production uses,” “homeowner,” “incurred in New Jersey,” “New Jersey film-lease partner facility or “film-lease partner facility,” “New Jersey film-lease production company” or “film-lease production company,” “New Jersey studio partner or studio partner,” “personal residence,” “production facility,” “reality show,” “shoot day,” “square feet,” and “taxpayer.”

N.J.A.C. 19:31-21.3 Eligibility Criteria

N.J.A.C. 19:31-21.3, which outlines the criteria for a taxpayer to be eligible for the Program, is revised as follows:

N.J.A.C. 19:31-21.3(a) and -21.3(a)1 are amended to add the term “applicant” and clarify the eligibility of wages and salaries in the calculation of total film production expenses and qualified film production expenses.

N.J.A.C. 19:31-21.3(a)2 is amended to clarify the required commencement of that principal photography must be commenced within 180 days from the date of the completed application for the tax credit.

N.J.A.C. 19:31-21.3(a)4 is amended to include the term “applicant.”

N.J.A.C. 19:31-21.3(a)5 is amended to include the term “applicant” and “homeowner.”

N.J.A.C. 19:31-21.3(a)6 is added to require that at least one principal photography day is shot within New Jersey.

N.J.A.C. 19:31-21.3(a)7 is added to require that, for a studio partner or film-lease production company, the principal photography of the film must commence after the designation of the studio partner or the corresponding film-lease partner facility.

N.J.A.C. 19:31-21.3(b), N.J.A.C. 19:31-21.3(b)1 and N.J.A.C. 19:31-21.3(b)2 are amended for clarity to add the term “applicant” and remove “taxpayer.”

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N.J.A.C. 19:31-21.3(c) is amended to include the title of the “New Jersey Gross Income Tax Act,” add the term “approved applicant,” “applicant,” “homeowner,” “personal residence,” as well as to remove “taxpayer.”

N.J.A.C. 19:31-21.3(d) is added to set forth the application and eligibility requirements to be designated a studio partner and provides that no more than three film production companies may be designated as a studio partner.

N.J.A.C. 19:31-21.3(e) is added to set forth the application and eligibility requirements to be designated as a film-lease partner facility.

N.J.A.C. 19:31-21.3(e)1 sets forth that with certain exceptions, 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 of equity in the production facility.

N.J.A.C. 19:31-21.3(e)2 sets forth that 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.

N.J.A.C. 19:31-21.3(f) is added and sets forth the application and eligibility requirements for a reality show.

N.J.A.C. 19:31-21.3(g) is added and provides that for two or more buildings to qualify as a production facility the buildings must be proximate to each other.

N.J.A.C. 19:31-21.3(g)1, N.J.A.C. 19:31-21.3(g)2, and N.J.A.C. 19:31-21.3(g)3 set forth examples of buildings that are proximate.

19:31-21.4 Application submission requirements

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N.J.A.C. 19:31-21.4(a) is amended to remove the wording “, but not limited to, the following.”

N.J.A.C. 19:31-21.4(a)4 is amended to differentiate the required breakout of projected costs for applications filed before July 2, 2021, versus on or after July 2, 2021.

N.J.A.C. 19:31-21.4(a)5 is amended to add the term “film.”

N.J.A.C. 19:31-21.4(a)8 is removed and replaced with the language formerly found at N.J.A.C. 19:31-21.4(a)9.

N.J.A.C. 19:31-21.4(a)9 is removed and replaced with the language formerly found at N.J.A.C. 19:31-21.4(a)10.

N.J.A.C. 19:31-21.4(a)10 is removed and replaced with the language formerly found at N.J.A.C. 19:31-21.4(a)11. Language is added to clarify that an executed letter of interest, lease, sublease, deed, or purchase contract is required.

N.J.A.C. 19:31-21.4(a)11 is revised to set forth the requirement if the applicant is seeking a film tax credit as a studio partner.

N.J.A.C. 19:31-21.4(a)12 is added to set forth the requirement if the applicant is seeking a film tax credit as a film-lease production company.

N.J.A.C. 19:31-21.4(a)13 is added to allow the Authority to obtain any other necessary and relevant information, as determined by the Authority, for a specific application.

N.J.A.C. 19:31-21.4(b) is added to set forth what is required in a completed application to be designated as a studio partner.

N.J.A.C. 19:31-21.4(c) is added to set forth what is required in a completed application to be designated as a film-lease partner facility.

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N.J.A.C. 19:31-21.4(d) is amended to set forth what is required in a completed application for digital media tax credits.

19:31-21.5 Fees

N.J.A.C. 19:31-21.5(a) is amended to set forth the revised application fees for the Program.

N.J.A.C. 19:31-21.5(b) is added to set forth the revised fees prior to approval for the Program.

N.J.A.C. 19:31-21.5(c) is amended to set forth the revised fees required prior to receipt of tax credits for the Program.

N.J.A.C. 19:31-21.5(d) is amended to set forth the revised fees required upon application of a tax credit transfer certificate for the program.

N.J.A.C. 19:31-21.5(e) is added to set forth the fees required upon extension to the date the temporary certification of occupancy for the production facility is due.

N.J.A.C. 19:31-21.5(f) is added to sets forth the fees required for each request for any minor administrative changes, additions, or modifications and for each request for any major administrative changes, additions, or modifications.

N.J.A.C. 19:31-21.5(g) is amended to set forth that the full amount of direct costs of 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

N.J.A.C. 19:31-21.6(a) is amended to remove and replace the term “taxpayer” with the term “approved applicant,” revise a citation to N.J.A.C. 19:31-21.7(e), and revise language clarifying the percentage of qualified film production expenses 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.

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N.J.A.C. 19:31-21.6(b) is amended to remove and replace the term “taxpayer” with the term “approved applicant,” and revise language clarifying the percentage of qualified film production expenses pursuant to P.L. 2020, c. 156, set forth at N.J.A.C. 19:31-21.6(b)1 through N.J.A.C. 19:31-21.6(b)3.

N.J.A.C. 19:31-21.6(c) is amended to add language clarifying that 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 N.J.A.C. 19:31-21.6(a) or N.J.A.C. 19:31-21.6(b).

N.J.A.C. 19:31-21.6(d) and N.J.A.C. 19:31-21.6(e) are amended to add the title of the “Corporation Business Tax Act” and add “under this program” to clarify certain circumstances where a business may be an eligible applicant.

N.J.A.C. 19:31-21.6(f) is amended to add “gross income” to clarify the application of the tax credit to a gross income taxpayer.

N.J.A.C. 19:31-21.6(g) is amended to delete “section” and replace it with “subchapter” as well as add “gross income” to clarify the application of the tax credit to a gross income taxpayer.

N.J.A.C. 19:31-21.6(i) is amended to clarify that 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.

N.J.A.C. 19:31-21.6(j) is amended to add “gross income” to clarify that 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

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adjustments allowed by law, shall not reduce the tax liability of the gross income taxpayer to an amount less than zero.

N.J.A.C. 19:31-21.6(k) is amended to correct the citation to N.J.S.A. 54A:1-1 et seq.

N.J.A.C. 19:31-21.6(l) is amended to include the limits found a N.J.A.C. 19:31-21.6(b), include reference to the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq., and include in N.J.A.C. 19:31-21.6(l)1(i) the eligibility for an increase in the tax credit to 25 percent for applicants approved after the effective date of these rules.

N.J.A.C. 19:31-21.6(l)2 is repealed and replaced to reflect the increase to a 25 percent goal of hiring persons as performers in the film and digital media production who are women or members of a minority group (N.J.A.C. 19:31-21.6(l)2(i)), have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording, and are members of a labor union.

N.J.A.C. 19:31-21.6(l)3 is deleted.

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

The title of N.J.A.C. 19:31-21.7 is amended to remove “appeals.” The appeals language can now be found at N.J.A.C. 19:31-21.13.

N.J.A.C. 19:31-21.7(a) is amended to clarify that 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.

N.J.A.C. 19:31-21.7(a)1 is amended to clarify that application for tax credits shall be considered by the Authority for initial approval on a first in time basis, subject to the annual caps set forth at N.J.A.C. 19:31-21.11.

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N.J.A.C. 19:31-21.7(a)2 is amended to set forth that 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.

N.J.A.C. 19:31-21.7(a)3 is amended to clarify the Authority shall issue an initial approval letter to the 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 N.J.A.C. 19:31-21.7(b) is required. N.J.A.C. 19:31-21.7(a)3 is further amended to set forth that the approval letter shall constitute the non-binding, administrative pre-certification process for potentially eligible projects and failure to submit timely reports may lead to the forfeiture of the tax credit.

N.J.A.C. 19:31-21.7(b) is amended to replace the term “taxpayer” with “approved applicant.”

N.J.A.C. 19:31-21.7(c) is amended to replace the term “taxpayer” with “approved applicant” and clarify that the documentation related to the total film production expenses or the total digital media content production expenses are for the privilege period or taxable year identified in the initial approval.

N.J.A.C. 19:31-21.7(c)1 is amended to remove language regarding the time period from the initial approval by the Authority and clarify that is from the date of the completed application for the tax credit.

N.J.A.C. 19:31-21.7(c)2 is added to set forth that if the approved applicant is a studio partner or film-lease production facility, a certification must be provided by 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.

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N.J.A.C. 19:31-21.7(c)3 is amended to clarify that 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 as well as federal identification number are required.

N.J.A.C. 19:31-21.7(c)4 is amended to add “approved” to applicant and remove “and.”

N.J.A.C. 19:31-21.7(c)4(i) is amended to remove and replace the term “taxpayer” with “approved applicant” and to add that the report shall include the date of the last total film production expense excluding any deferred compensation payments.

N.J.A.C. 19:31-21.7(c)4(i)(1) through N.J.A.C. 19:31-21.7(c)4(i)(5) are added to set forth reviews required by the report set forth at N.J.A.C. 19:31-21.7(c)4.

N.J.A.C. 19:31-21.7(c)4(ii) is added to set forth that 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.

N.J.A.C. 19:31-21.7(c)4(iii) is added to set forth that the amount of the qualified film production expenses or qualified digital media content production expenses in the report shall not be increased regardless of additional expenses after the date of the report.

N.J.A.C. 19:31-21.7(c)4(iv) is added to set forth that if the approved applicant is a studio partner and the qualified film production expenses include deferred compensation payments, the report shall include information necessary and relevant, as determined by the Authority, to demonstrate such deferred compensation payments.

N.J.A.C. 19:31-21.7(c)4(v) is added to set forth that 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.

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N.J.A.C. 19:31-21.7(c)5 is amended to remove language regarding the New Jersey Division of Taxation conducting verification of partners or members of pass-through entities and add language regarding what is required in the report for approved applicants that received initial approval for the production of a reality show.

N.J.A.C. 19:31-21.7(c)5(i) through N.J.A.C. 19:31-21.7(c)5(v) are amended to set forth the additional requirements for approved applicants that received initial approval for the production of a reality show.

N.J.A.C. 19:31-21.7(c)6 is amended to set forth that, with respect to a film, what is required is 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.

N.J.A.C. 19:31-21.7(c)7 is amended to set forth that if the approved applicant was initially approved for a bonus amount for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l), evidence of achieving the relevant percentage in the diversity plan or good faith efforts to undertake the diversity plan must be provided. 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 New Jersey Division of Taxation.

N.J.A.C. 19:31-21.7(c)8 is added to set forth that 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 is required in the report.

N.J.A.C. 19:31-21.7(c)9 is added to set forth that a certification from the approved applicant that the information provided in the report is true under the penalty of perjury.

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N.J.A.C. 19:31-21.7(c)10 is added to set forth that the Authority may request any other information necessary for the Authority and the Director to determine compliance with the Program.

N.J.A.C. 19:31-21.7(d) is amended to replace “certification” with “report” and “taxpayer” with “approved applicant.”

N.J.A.C. 19:31-21.7(e) is amended to add “approved,” replace “taxpayer” with “approved applicant,” and revise a citation.

N.J.A.C. 19:31-21.7(f) is amended to set forth that if a studio partner received a tax credit for qualified film production expenses that included deferred compensation payments, 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. The appeal section is moved to N.J.A.C. 19:31-21.11.

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

A new N.J.A.C. 19:31-21.8 is added to set forth the evaluation process and designation of studio partner and film-lease partner facility.

N.J.A.C. 19:31-21.8(a) sets forth that an application for designation as a studio partner or a film-lease partner facility shall be submitted to the Authority.

N.J.A.C. 19:31-21.8(b) sets forth that 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 the Authority may institute a competitive application process.

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N.J.A.C. 19:31-21.8(c) sets forth that, in order 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 New Jersey Motion Picture and Television Commission.

N.J.A.C. 19:31-21.8(d) sets forth that 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's commitment period.

N.J.A.C. 19:31-21.8(d)1 sets forth that, 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 that the film production company otherwise complies with the eligibility requirements of the Program.

N.J.A.C. 19:31-21.8(d)2 sets forth that a film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the Authority, provided that final approval of such agreement occurs on or before the date on which production commences at the facility.

N.J.A.C. 19:31-21.8(f) sets forth that, 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.

N.J.A.C. 19:31-21.8(f)1 sets forth that the conditions of approval shall include, but not be limited to: submission of periodic progress reports; executed financing commitments, if applicable; evidence of site plan approval or executed redevelopment agreement with a

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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.

N.J.A.C. 19:31-21.8(f)2 sets forth that, 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 prevailing wage and affirmative action requirements and that the production facility does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, et seq.

N.J.A.C. 19:31-21.8(f)3 sets forth that 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 later of Board approval of the designation and the effective date of this special adoption. The Authority shall grant no more than two six-month extensions of this deadline.

N.J.A.C. 19:31-21.8(f)4 sets forth that, 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).

N.J.A.C. 19:31-21.8(g) sets forth that, 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, the developer contributed capital or equity, the magnitude of State or other

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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.

N.J.A.C. 19:31-21.8(h)1 and (h)2 set forth that a studio partner shall execute an award agreement that shall include, but not be limited to: the commencement of the commitment and eligibility periods and an agreement that the studio partner shall maintain the lease or ownership of the production facility for the duration of the commitment period.

N.J.A.C. 19:31-21.8(h)2(i) sets forth that the studio partner shall 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.

N.J.A.C. 19:31-21.8(h)2(ii) sets forth that unless otherwise allowed in this subchapter, the studio partner shall 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.

N.J.A.C. 19:31-21.8(i)1 and (i)2 set forth that a film-lease partner facility shall execute an award agreement that shall include, but not be limited to: the commencement of the ownership, lease or operation; and if not owned, the length of the lease or other site control agreement and an agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility in order to maintain the designation.

N.J.A.C. 19:31-21.8(i)2(i) sets forth that a film-lease partner facility shall 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.

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N.J.A.C. 19:31-21.8(i)2(ii) sets forth that, absent the Authority's written consent, the film-lease partner facility shall 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.

N.J.A.C. 19:31-21.8(i)2(iii) sets forth that unless otherwise allowed in this subchapter, the film-lease partner facility shall not receive any tax credits under this program for any activity of its occupant, tenant, or subtenant.

N.J.A.C. 19:31-21.8(j) sets forth what must be included in the award agreement for a studio partner and a film-lease partner facility.

19:31-21.9 Recapture and reduction of tax credits

A new N.J.A.C. 19:31-21.9 has been added. N.J.A.C. 19:31-21.9(a) sets forth that, 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.

N.J.A.C. 19:31-21.9(b) sets forth that, 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 or otherwise fails to satisfy the conditions for designation as a film-lease partner facility for the duration of the five year period, the Authority shall recapture the portion of the tax credit from the film-lease partner facility that was only available to film-lease production

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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.

N.J.A.C. 19:31-21.9(c) sets forth that 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.

N.J.A.C. 19:31-21.9(d) sets forth that if, at any time, the Authority determines that an approved applicant made a material misrepresentation, the approved applicant shall forfeit and the Authority may recapture any or all of the tax credits awarded.

N.J.A.C. 19:31-21.9(e) sets forth that any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-21.10 Application for tax credit transfer certificate

N.J.A.C. 19:31-21.10(a), formerly found at N.J.A.C. 19:31-21.8(a), is amended to remove and replace "taxpayer" with "approved applicant."

N.J.A.C. 19:31-21.10(b), formerly found at N.J.A.C. 19:31-21.8(b), is amended to remove and replace "taxpayer" with "approved applicant."

N.J.A.C. 19:31-21.10(c), formerly found at N.J.A.C. 19:31-21.8(c), is amended to remove and replace "taxpayer" with "approved applicant."

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N.J.A.C. 19:31-21.10(e) sets forth that the Authority shall publish on its Internet website information concerning each tax credit transfer certificate approved by the Authority.

19:31-21.11 Cap on total credits

N.J.A.C. 19:31-21.11(a) formerly found at N.J.A.C. 19:31-21.9(a)1, sets forth the total cap on tax credits.

N.J.A.C. 19:31-21.11(a)1 sets forth that pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), for qualified film production expenses of applicants other than for studio partners and film-lease production companies, the cumulative total shall not exceed \$100,000,000.

N.J.A.C. 19:31-21.11(a)2(i) sets forth that, for studio partners and film-lease production companies, 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, 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.

N.J.A.C. 19:31-21.11(a)3 sets forth that 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 exceeds the amount of tax credits available in that fiscal year, then 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 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 are not in excess of the amount of applicable credits available.

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N.J.A.C. 19:31-21.11(b) sets forth that the value of tax credits for digital media content production expenses, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director shall not exceed a cumulative total of \$30,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to 2040. 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 exceeds the amount of tax credits available in that year, then 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 are not in excess of the amount of credits available.

N.J.A.C. 19:31-21.11(c) and (d) set forth the process by which the Authority shall certify available tax credits under the Program.

N.J.A.C. 19:31-21.11(e) sets forth that 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 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.

19:31-21.12 Affirmative action and prevailing wage

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N.J.A.C. 19:31-21.12(a) is amended to clarify when the Authority's affirmative action and prevailing wage requirements apply to qualified film production expenses and qualified digital media content production expenses.

N.J.A.C. 19:31-21.12(b) is added to clarify when the Authority's affirmative action and prevailing wage requirements apply to studio partners and film-lease partner facilities.

19:31-21.13 Appeals

N.J.A.C. 19:31-21.13 sets forth the appeal process. This provision was formerly codified at N.J.A.C. 19:31-21.7. The amendment to this rule set forth that 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.

N.J.A.C. 19:31-21.13(c) is added and sets forth that appeals that are timely submitted shall be handled by the Authority.

19:31-21.14 Severability

The severability provision formerly codified at N.J.A.C. 19:31-21.11 is now codified at – 21.14.

Social Impact

The Garden State Film and Digital Media Jobs Program authorizes corporation business and gross income tax credits for certain expenses incurred for the production of certain films and digital media content in New Jersey, with additional benefits for production companies making long-term film production commitments, or significant capital investments in New Jersey. The specially adopted concurrently proposed amendments and new rules will have a positive social impact by attracting motion picture, television, and digital media production in New Jersey, which create both permanent production jobs as well as construction jobs, promote New Jersey's diverse

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locations and landscapes, incentivize diversity in recruitment and hiring, revitalize local economic activity, catalyze tourism activity, and reestablish New Jersey's competitiveness in the motion picture and television industry.

Economic Impact

The total amount of film tax credits available pursuant to the legacy program is \$100 million, per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2039, for a total available pool of \$2 billion. The total amount of film credits available for studio partners is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2023, and beginning in State Fiscal Year 2024 and ending in State Fiscal Year 2039 is \$150 million per State Fiscal year for a total available pool of \$2.65 billion. The total amount of film credits available for film-lease production companies is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2023, the total amount of tax credits available to film-lease production companies is \$150 million beginning in State Fiscal Year 2024 and ending in State Fiscal Year 2039 for a total available pool of \$2.65 billion. The total amount of digital media tax credits available under the Program is \$30 million per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2034, for a total available pool of \$450 million.

The specially adopted concurrently proposed amendments and new rules will impose appropriate costs on applicants. The fees for the Program are intended to ensure a source of necessary administrative fee revenue for the NJEDA to more fully cover the costs of administering the Program.

Federal Standards Statement

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A Federal standards analysis is not required because the specially adopted concurrently proposed amendments and new rules are not subject to any Federal requirements or standards.

Jobs Impact

In New Jersey, average annual employment in the motion picture and video industry totals over 7,000 or 0.6 percent of the State's private sector workers, with wages paid of more than \$374 million or 0.4 percent of the State's total wages. The Authority anticipates that the specially adopted concurrently proposed amendments and new rules will spur an indeterminate amount of job creation, which includes direct job creation through film, television, and digital media production companies producing content in New Jersey, and indirectly through local businesses and vendors that provide support services to film, television, or digital media production. The specially adopted concurrently proposed amendments and new rules, which offer additional benefits for production companies making long-term film production commitments and/or significant capital investment in New Jersey, will result in the creation of jobs that are less transient relative to individual film productions, and more permanent relative to sustained and ongoing film and television production.

Agriculture Industry Impact

The specially adopted concurrently proposed amendments and new rules will not have any impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The specially adopted concurrently proposed amendments and new rules may impose minimal reporting, recordkeeping, and other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, eligible businesses will be required to comply with the Authority's standard online application process and

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regular incentive compliance requirements, however, any costs due to reporting, recordkeeping, and other compliance requirements on qualifying businesses will be fully offset by the amount of financial assistance received, and the only professional services required for such purposes are fully offset by the amount of financial assistance received and the only professional services required for such purposes are from a certified public accountant.

Housing Affordability Impact Analysis

The specially adopted concurrently proposed amendments and new rules will not have any effect on the average costs associated with housing, nor will it affect the affordability of housing in the State.

Smart Growth Development Impact Analysis

The specially adopted concurrently proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that they would evoke a change in housing production in Planning Areas 1 or 2, or in designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The specially adopted concurrently proposed amendments and new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM

19:31-21.1 Applicability and scope

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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 or entity 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 or entity 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.

...

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

"Commitment period" means 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.**

“Deferred compensation” means additional payments made to highly compensated individuals such as writers, directors, producers, and performers, other than background actors with no scripted lines, that increase the total remuneration received for services performed on a production. Deferred compensation payments may include, but are not limited to, payments and advance payments for profit participations, residuals, launch bonuses, buy-out fees, or any other compensation due a highly compensated individual as a result of their services performed on, or the financial exploitation of a film or commercial audiovisual product.

"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

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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.

...

"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) **documentary feature film, documentary television series, or documentary television shows** (2) a game show, [award show,] (3) **talk show**, (4) **competition or variety show filmed before a live audience**, or (5) **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

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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.

...

"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 five successive years beginning with the later of the date of Authority approval or the issuance of the temporary certificate(s) of occupancy:

- 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.

...

"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.

...

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“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 **director of the film on set**[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.

...

“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.

...

“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

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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, based on the qualified film production expenses in the State without including the excess amounts paid to highly compensated individuals:

- 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**.

...

"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.

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“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, **at the time the expense was incurred in New Jersey**, 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

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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. (No change.)

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:

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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)4; 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

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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) 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 film-lease partner facility or any other investor in lieu of redemption.

- 2) 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. – 3. (No change.)

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 the effective date of 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:

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i. – iv. (No change.)

6. – 7. (No change.)

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.] 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. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30–2;

12. Submission of a tax clearance certificate;

13. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1, et seq, that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

14. 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;

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(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;

15. 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:

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(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

16. 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, including but not limited to a certification, 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;**

5. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30–2;

6. Submission of a tax clearance certificate; and

7. 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 five-year 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;

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. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30–2;

6. Submission of a tax clearance certificate; and

7. 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**

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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]

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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 **\$ 10,000.00**;
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**;

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- 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 \$ 500.00;**
- 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 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;**
- 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 \$ 25,000;**
- 6. For applications to be designated as a studio partner, the fee to be charged prior to approval shall be \$ 50,000; 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.**

[(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: [.]

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- 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 \$ 500.00;**
- 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;**
- 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; 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 \$25,000.**

[(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; 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.

(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(e)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

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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 prior to the effective date of P.L. 2020, c. 156 (January 7, 2021), 30 percent of the qualified film production expenses not included in paragraph 1 above.**

- 3. For applications received on or after the effective date of P.L. 2020, c. 156 (January 7, 2021) and 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.**

4. 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:

i. For such expenses 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:

(1) For applications received after the effective date of P.L. 2023, c. 97 (July 6, 2023), 35 percent for applications from film-lease production companies and studio partners.

(2) 30 percent for all other applications.

ii. For all other expenses:

(1) For applications received after the effective date of P.L. 2023, c. 97 (July 6, 2023), 40 percent for applications from film-lease production companies and studio partners.

(2) 35 percent for all other applications.

5. For purposes of this subsection (a), wages, salaries and other compensation shall be

considered State-wide expenses. (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)](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., **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**

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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]

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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) (No change.)
- (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

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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. – iv. (No change.)

[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

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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

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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.

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(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

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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 **achieving the relevant percentage in the diversity plan or** 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(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

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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

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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.

(c) 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.

(d) 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'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.

(e) 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. 19:31-21.10, 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 later of Board approval of the designation and February, 26 2024, the effective date of these rules. 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).

(f) 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.

(g) 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.

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

1. The commencement of the ownership, lease or operation and if not owned the length of the lease or other site control agreement; and

2. An agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility in order to maintain the designation. The film-lease partner facility shall:

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- 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;**
- 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.**

(i) 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 revoke the designation of the studio partner and recapture the portion of the tax credit from the studio partner that was only available to the studio partner or any film production company 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 or otherwise fails to satisfy the conditions for designation as a film-lease partner facility for the duration of the five year period, the authority shall revoke the designation of the film-lease partner facility and 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 a designated studio partner or film-lease partner facility made a material misrepresentation on its application or any submission pursuant to this program, the Authority shall revoke the designation and studio partner or film-lease partner facility shall forfeit, and the Authority may recapture any or all of, the tax credits awarded to the studio partner or any film production company approved for tax credits by virtue of the designation, 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) If, at any time, the Authority determines that an approved applicant for a tax credit 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.

(f) 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(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

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[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

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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 qualified film production expenses 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 later of 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

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unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.