

[N.J. Stat. § 54:10A-5.39b](#)

Current through New Jersey 220th Second Annual Session, L. 2023, c. 171 and J.R. 15

LexisNexis® New Jersey Annotated Statutes > Title 54. Taxation (Subts. 1 — 9) > Subtitle 4. Particular Taxes on Corporations and Others (Pts. 1 — 6) > Part 1. Provisions Applicable to Corporations Generally (Chs. 10 — 11) > Chapter 10A. Corporation Business Tax Act (1945) (§§ 54:10A-1 — 54:10A-41)

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

a.

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

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

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

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

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

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

(2) Notwithstanding the provisions of paragraph (1) of subsection a. of this section to the contrary, the tax credit allowed pursuant to this subsection against the tax imposed pursuant to

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

b.

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

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

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

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

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

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

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

subsection (e) of section 5 of P.L.1945, c.162 ([C.54:10A-5](#)). The amount of the tax credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of P.L.1945, c.162 ([C.54:10A-1](#) et seq.) may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

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

e.

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

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

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

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

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

(2) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the authority and the director pursuant to subsection b. of this section and pursuant to subsection b. of section 2 of [P.L.2018, c.56 \(C.54A:4-12b\)](#) shall not exceed a cumulative total of \$30,000,000 in fiscal year 2019 and in each fiscal year thereafter

prior to fiscal year 2040 to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 ([C.54:10A-5](#)) and the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq.

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

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

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

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

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

h. As used in this section:

"Authority" means the New Jersey Economic Development Authority.

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

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

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

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

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

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

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

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

“Full-time or full-time equivalent employee” means an individual employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service

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

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

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

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

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

“New Jersey film-lease partner facility” means:

(1)

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

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

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

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

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

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

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

film-lease production company” may include any other member of a taxpayer’s combined group, pursuant to [P.L.2018, c.131 \(C.54:10A-4.11\)](#), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey film-lease production company contracts to perform film production services on its behalf such that the designated New Jersey film-lease production company controls such film or product during preproduction, production, and postproduction and all results and proceeds of such services constitute, from the moment of creation, “works made for hire” for the New Jersey film-lease production company pursuant to the provisions of the federal “Copyright Act of 1976” ([17 U.S.C. § 101](#) et seq.).

“New Jersey studio partner” means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility of 250,000 square feet or more, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility of 250,000 square feet or more within 48 months from the date of designation as a New Jersey studio partner; provided, however, the board, in its discretion, may extend the time to execute a purchase contract for an additional 12 months. Effective upon designation as a New Jersey studio partner, a film production company shall be eligible for a credit pursuant to this section, provided the film production company otherwise complies with the eligibility requirements of Film and Digital Media Tax Credit Program. In the event the authority determines that a film production company has failed to meet the qualifications of a New Jersey studio partner or otherwise comply with the provisions of this section, the authority may rescind the New Jersey studio partner designation and may recapture from that film production company the portion of any tax credit that had been awarded to that film production company that was only available to the film production company by virtue of the film production company’s designation as a New Jersey studio partner. A “New Jersey studio partner” may include any other member of a taxpayer’s combined group, pursuant to [P.L.2018, c.131 \(C.54:10A-4.11\)](#), or an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated New Jersey studio partner contracts to perform film production services on its behalf such that the designated New Jersey studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, “works made for hire” for the New Jersey studio partner pursuant to the provisions of the federal “Copyright Act of 1976,” ([17 U.S.C. § 101](#) et seq.). No more than three film production companies may be designated as a New Jersey studio partner.

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

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

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

“Qualified digital media content production expenses” means an expense incurred in New Jersey for the production of digital media content. “Qualified digital media content production expenses” shall include but not be limited to: wages and salaries of individuals employed in

the production of digital media content on which the tax imposed by the “New Jersey Gross Income Tax Act,” [N.J.S.54A:1-1](#) et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be deemed a “qualified digital media content production expense” unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required pursuant to subsection g. of this section.

“Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer’s digital media content shall not be deemed “qualified digital media content production expenses.”

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

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

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

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

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

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

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

“Total digital media content production expenses” means costs for services performed and property used or consumed in the production of digital media content.

“Total film production expenses” means costs for services performed and tangible personal property used or consumed in the production of a film.

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

History

L. [2018, c. 56](#), § 1, effective July 3, 2018; amended by [2019, c. 506](#), § 1, effective January 21, 2020; [2020, c. 156](#), § 110, effective January 7, 2021; [2021, c. 160](#), § 58, effective July 2, 2021; [2021, c. 367](#), § 1, effective January 12, 2022; [2023, c. 97](#), § 5, effective July 6, 2023.

Notes

Publisher's Notes

The bracketed material was added by the Publisher to provide a reference.

Editor's Notes

The title to L. [2018, c. 56](#) designates the act as the “Garden State Film and Digital Media Jobs Act.”

L. [2018, c. 56](#) was enacted in accordance with the Governor's recommendations made on conditional veto of the legislation (Senate Bill No. 122). The Governor recommended the addition of section 4 of the act and also the language beginning “or a reality show” in the second sentence of the definition of “Film” in subsection h. of [54:10A-5.39b](#).

Section 3 of L. [2018, c. 56](#) provides: “Notwithstanding the provisions of the 'Administrative Procedure Act,' P.L.1968, c.410 ([C.52:14B-1](#) et seq.), to the contrary, the New Jersey Economic Development Authority and the Director of the Division of Taxation in the Department of the Treasury may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority or the director shall determine to be necessary to effectuate the purposes of [P.L.2018, c.56](#) ([C.54:10A-5.39b](#) et al.), which rules and regulations shall be effective for a period not exceeding 360 days following the effective date of [P.L.2018, c.56](#) ([C.54:10A-5.39b](#) et al.) and may thereafter be amended, adopted, or readopted by the authority or the director in accordance with the requirements of P.L.1968, c.410 ([C.52:14B-1](#) et seq.)”

Section 4 of L. [2018, c. 56](#), as amended by section 3 of L. [2019, c. 506](#) and by section 3 of L. [2021, c. 367](#), and by section 7 of L. [2023, c. 97](#), provides:

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

- (1) the application is accompanied by a diversity plan outlining specific goals, which may include advertising and recruitment actions, for hiring minority persons and women;
- (2) the director and the authority have approved the plan as meeting the requirements established by the director and the authority; and
- (3) the director and the authority have verified that the applicant has met or made good faith efforts in achieving those goals.

b. The amount of a tax credit allowed pursuant to subsection a. of this section shall increase to four percent of the qualified film or digital media content production expenses of the taxpayer if the diversity plan, in addition to meeting the requirements of subsection a. of this section, outlines specific goals that include hiring persons as performers in the film or digital media production who are: (i) women or

members of a minority group; (ii) residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and (iii) members of a bona fide labor union representing film and television performers.

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

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

Effective Dates

Section 70 of L. [2021, c. 160](#) provides: “This act shall take effect immediately, and the amendments made to [P.L.2020, c.156](#) by this act, [P.L.2021, c.160](#) ([C.34:1B-370](#) et al.), shall apply to applications submitted pursuant section 72 of [P.L.2020, c.156](#) ([C.34:1B-340](#)), section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)), and 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) on or after the effective date of [P.L.2020, c.156](#), except the amendments made by this act to paragraph (2) of subsection a. of section 1 of [P.L.2018, c.56](#) ([C.54A:4-12a](#)) and paragraph (2) of subsection a. of section 2 of [P.L.2018, c.56](#) ([C.54A:4-12b](#)) shall apply to applications submitted on and after the effective date of this act. The amendments made to [P.L.2020, c.156](#) by this act shall apply to all other applications submitted under [P.L.2020, c.156](#) on and after the effective date of this act.” Chapter 160, L. 2021, was approved on July 2, 2021.

Amendment Notes

2019 amendment, by Chapter 506, substituted “July 1, 2028” for “July 1, 2023” in the introductory language of a.(1) and b.(1); in e.(1), in the first sentence, substituted “\$100,000,000” for “\$75,000,000” and “2029” for “2024” and added the second paragraph; substituted “2029” for “2024” in the first sentence of e.(2); in h., in the definition of “Qualified digital media content production expenses”, inserted “deemed” in the third sentence and the last sentence, and inserted “deemed” in the third sentence of the definition of “Qualified film production expenses”; and made stylistic changes.

2020 amendment, by Chapter 156, in e.(1), inserted “to taxpayers, other than New Jersey film partners and New Jersey film-lease partners” in the first sentence and added the second and last sentences and deleted the third sentence of the third paragraph, which read: “The combined increase to the cumulative total permitted to be approved in a subsequent fiscal year pursuant to this paragraph shall not exceed \$50,000,000”; added the last paragraph of e.(2); in h., added the definition of “New Jersey film partner” and “New Jersey film-lease partner”; and in the definition of “Qualified film production expenses” added “except as follows” at the end of the introductory language and added (1) through (4).

2021 amendment, by Chapter 160, substituted “35 percent” for “30 percent” and “2034” for “2028” in the introductory language of a.(1); inserted “for services performed, and goods purchased, through vendors authorized to do business in New Jersey” in a.(1)(a); deleted “the earlier of” following “within,” and “or 150 days from the date of approval of the application for the tax credit” following “tax credit” in a.(1)(b); substituted “30 percent” for “35 percent” and “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” for “through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or

Salem County” in a.(2); substituted “2034” for “2028” in b.(1); substituted “studio” for “film” throughout e.(1), and h.(1) through h.(4); substituted “2035” for “2029” in the first sentence of e.(1) and e.(2); added the third and the last three sentences in the first paragraph of e.(1); inserted “for New Jersey studio partners” twice in the third paragraph of e.(1); added the fifth through seventh sentences in f.; in h., added the definitions of “Incurred in New Jersey,” and “New Jersey studio partner”; and deleted the definition of “New Jersey film partner.”

2021 amendment, by Chapter 367, substituted “30 percent” for “20 percent” in b.(1); substituted “35 percent” for “25 percent” in b.(2); in e.(1), in the first paragraph, inserted the fifth sentence, deleted “pursuant to N.J.A.C.19:31-21.7(c)” following “documentation” next to last sentence, and rewrote the last paragraph; substituted “\$30,000,000” for “\$10,000,000” in the first paragraph of e.(2); substituted “lease or acquire all or part of a New Jersey production facility, which leased or acquired space shall have an aggregate square footage of at least 50,000 square feet, including a sound stage” for “lease or acquire a New Jersey production facility with an aggregate square footage of at least 50,000 square feet, which includes a sound stage” in the definition of “New Jersey film-lease partner”; and deleted “as a ‘transformative project’ pursuant to section 65 of P.L.2020, c.156 (C.34:1B-333)” following “more” at the end of the first sentence in the definition of “New Jersey studio partner.”