

CHAPTER 257

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

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

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

C.54:10A-5.39 Corporation business tax credit for certain film production, digital media content expenses; definitions.

1. a. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, 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 20 percent of the qualified film production expenses of the taxpayer during a privilege period commencing after the effective date of P.L.2005, c.345, provided that (1) at least 60 percent of the total film production expenses, exclusive of post-production costs, of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey, and (2) principal photography of the film commences within 150 days after the approval of the application for the credit.

b. A taxpayer, upon application to the Director of the Division of Taxation in the Department of the Treasury and the New Jersey Economic Development Authority, 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 up to 20 percent, as determined by the authority of the qualified digital media content production expenses of the taxpayer during a privilege period commencing after the effective date of P.L.2007, c.257, provided that at least \$2,000,000 of the total digital media content production expenses of the taxpayer will be incurred for services performed and goods used or consumed in New Jersey and at least a significant percentage, as determined by the authority, of the qualified digital media content production expenses of the taxpayer will include wages and salaries paid to one or more new full-time employees in New Jersey. For purposes of this subsection, "new full-time employee" means a person employed by the taxpayer for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, whose wages are subject to withholding as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or who is a partner of a taxpayer that is an eligible partnership, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., and who is determined by the authority to work in a newly created permanent position according to criteria it develops. "New full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. In determining the amount of any grant of tax credits made pursuant to this subsection, the authority shall consider the number of new full-time positions created by the taxpayer as well as the quality of the full-time positions created, including but not limited to the salaries and benefits provided to new full-time employees. The authority, in consultation with the Division of Taxation, shall establish rules for the recapture of all, or a portion of, the grant of tax credits pursuant to this subsection in the event the taxpayer fails to maintain the new full-time positions that were

included in calculating the qualified digital media content production expenses of the taxpayer.

c. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162, for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be as determined by the Director of the Division of Taxation. The amount of the 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 may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

d. A taxpayer may, with an application for a credit provided for in subsection a. or subsection b. of this section, apply to the director and the executive director of the authority for a tax credit transfer certificate in lieu of the taxpayer being allowed any amount of the credit against the tax liability of the taxpayer. The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax credit transfer certificate under this section. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the director and the authority, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under P.L.1945, c.162 or 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 credit. The certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the 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% of the transferred 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 shall be subject to the same limitations and conditions that apply to the use of a 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. 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 section 2 of P.L.2005, c.345 (C.54A:4-12).

e. As used in this section:

“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 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.

"Film" means a feature film, a television series or a television show of 15 minutes or more in length, intended for a national audience. "Film" shall not include a production featuring news, current events, weather and market reports or public programming, talk show, game show, sports event, award show or other gala 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.

"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 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.54A:1-1 et seq. has been paid or is due; the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. 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 qualified digital media content production expenses.

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including 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 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment. Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

"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.

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

f. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement this act including examples of qualified film production and digital media content production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection a. of this section and pursuant to section 2 of P.L.2005, c.345 (C.54A:4-12) shall not exceed a cumulative total of \$10,000,000 in any fiscal year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. If the cumulative total amount of credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection a. of this

section and section 2 of P.L.2005, c.345 (C.54A:4-12) exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection a. of this section and section 2 of P.L.2005, c.345 (C.54A:4-12) are not in excess of the amount of credits available. The value of credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the director and the authority pursuant to subsection b. of this section shall not exceed a total of \$5,000,000 in any fiscal year to apply against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the total amount of credits and tax credit transfer certificates allowed to taxpayers for privilege periods or taxable years commencing during a single fiscal year under subsection b. of this section exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under subsection b. of this section are not in excess of the amount of credits available. The Executive Director of the New Jersey Economic Development Authority, in conjunction with the Director of the Division of Taxation shall prepare and submit a report to the Governor and the Legislature on the effectiveness of the credit as an incentive for encouraging film productions and digital media content productions to locate in New Jersey which shall be completed before the third taxable year or privilege period in which a credit may be claimed.

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

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

C.54A:4-12 Gross income tax credit for certain film production expenses; definitions.

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

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

c. A taxpayer may, with an application for a credit provided for in subsection a. of this section, apply to the director and the executive director of the authority for a tax credit

transfer certificate in lieu of the taxpayer being allowed any amount of the credit against the tax liability of the taxpayer. The director and the executive director of the authority may consult with the New Jersey Motion Picture and Television Development Commission in consideration of any application for approval of a tax credit or tax credit transfer certificate under this section. The tax credit transfer certificate, upon receipt thereof by the taxpayer from the director and the authority, may be sold or assigned, in full or in part, to any other taxpayer that may have a tax liability under N.J.S.54A:1-1 et seq. or P.L.1945, c.162 (C.54:10A-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 credit. The certificate provided to the taxpayer shall include a statement waiving the taxpayer's right to claim that amount of the credit against the tax imposed pursuant to N.J.S.54A:1-1 et seq., 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% of the transferred credit amount. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability under N.J.S.54A:1-1 et seq., shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to subsection b. of this section. Any amount of a tax credit transfer certificate obtained by a purchaser or assignee under this section may be applied against the purchaser's or assignee's tax liability under P.L.1945, c.162 and shall be subject to the same limitations and conditions that apply to the use of a credit pursuant to section 1 of P.L.2005, c.345 (C.54:10A-5.39).

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

e. As used in this section:

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

"Qualified film production expenses" means an expense incurred in New Jersey for the production of a film including 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 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; the costs of construction, operations, editing, photography, sound synchronization, lighting, wardrobe and accessories and the cost of rental of facilities and equipment. Qualified film production expenses shall not include expenses incurred in marketing or advertising a film.

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

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

f. The Director of the Division of Taxation in the Department of the Treasury, in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Economic Development Authority, shall adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), as are necessary to implement this act including examples of qualified film production expenses and the procedures and forms to apply for a credit and for a tax credit transfer certificate necessary for a taxpayer to sell or assign an amount of tax credit under this section. The amount of 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 section 1 of P.L.2005, c.345 (C.54:10A-5.39) shall not exceed a cumulative total of \$10,000,000 in any fiscal year to apply against the tax imposed under N.J.S.54A:1-1 et seq., and the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5). If the cumulative total amount of credits and tax credit transfer certificates allowed to taxpayers for taxable years or privilege periods commencing during a single fiscal year under this section and subsection a. of section 1 of P.L.2005, c.345 (C.54:10A-5.39) exceeds the amount of credits available in that year, then taxpayers who have first applied for and have not been allowed a credit or tax credit transfer certificate amount for that reason shall be allowed, in the order in which they have submitted an application, the amount of tax credit or certificate on the first day of the next succeeding fiscal year in which tax credits and tax transfer certificates under this section and subsection a. of section 1 are not in excess of the amount of credits available. The Executive Director of the New Jersey Economic Development Authority, in conjunction with the Director of the Division of Taxation shall prepare and submit a report to the Governor and the Legislature on the effectiveness of the credit as an incentive for encouraging film productions to locate in New Jersey which shall be completed before the third taxable year or privilege period in which a credit may be claimed.

3. This act shall take effect immediately.

Approved January 11, 2008.