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TITLE 54. TAXATION  
SUBTITLE 4. PARTICULAR TAXES ON CORPORATIONS AND OTHERS  
PART 1. PROVISIONS APPLICABLE TO CORPORATIONS GENERALLY  
CHAPTER 10A. CORPORATION BUSINESS TAX ACT (1945)

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*N.J. Stat. § 54:10A-5.39 (2012)*

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

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 [Jan. 11, 2008] 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 [*C.54:10A-5.39*, *C.54A:4-12*] 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.).

**HISTORY:** L. 2005, c. 345, § 1; amended 2007, c. 257, § 1, eff. Jan. 11, 2008.

**NOTES:**

Amendment Note:

2007 amendment, by Chapter 257, inserted b. and redesignated former b. through e. as present c. through f.; in a., substituted "total film production expenses" for "total production expenses"; in present d., inserted "or subsection b." in the first sentence, substituted "subsection c." for "subsection b." in the next to last sentence, and substituted "subsection a. of this section" for "this section" in the last sentence; in present e., added the definitions of "Digital media content", "Qualified digital media content production expenses", and "Total digital media content production expenses", substituted "is due" for "are due" in the second sentence of the definition of "Qualified film production expenses", and substituted "Total film production expenses" for "Total production expenses" in the next to last definition; in present f., inserted "and digital media content production" in the first sentence, substituted "subsection a. of this section" for "this section" in the second sentence and twice in the third sentence, inserted the fourth and fifth sentences, and inserted "and digital media content productions" in the last sentence; and added g.

OLS Corrections:

Pursuant to *R.S.1:3-1*, the Office of Legislative Services, through its Legislative Counsel and with the concurrence of the Attorney General, corrected technical errors in L. 2007, c. 257, § 1.

Publisher's Note: The bracketed material was added by the Publisher to provide a reference.

Editor's Note:

L. 2007, c. 257, as enacted, contains recommendations made by the Governor on conditional veto of the legislation (Senate Bill No. 2526).

Motion Picture and Television Development Commission, see *34:1B-24*.

Effective Dates:

Section 3 of L. 2005, c. 345 provides: "This act shall take effect immediately and apply to qualified film production expenses incurred on or after the date of enactment, and sections 1 and 2 shall apply respectively to privilege periods and taxable years beginning on and after July 1, 2005 and shall expire with privilege periods and taxable years first commencing after July 1, 2015." Chapter 345, L. 2005, was approved on Jan. 12, 2006.

Cross References:

Certain tax credits prohibited, see *54:10A-5.39a*.

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

Application of certain tax credits prohibited, see *54A:4-12a*.

Administrative Code:

1. *N.J.A.C. 18:7-3.17* (2012), CHAPTER CORPORATION BUSINESS TAX ACT, Coordination of tax credits.
2. *N.J.A.C. 18:7-3B.5* (2012), CHAPTER CORPORATION BUSINESS TAX ACT, Award of tax credits.
3. *N.J.A.C. 18:35-4.4* (2012), CHAPTER NEW JERSEY GROSS INCOME TAX, Film tax credit.

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Film Production & Incentives