



# Draft Garden State Film and Digital Media Jobs Program Rules Proposal for Informal Public Comment

## PURPOSE OF DOCUMENT

These draft rules include recommendations related to program design and administration for the Garden State Film and Digital Media Jobs Program, authorized by the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, (N.J.S.A. 54:10A-5.39b and N.J.S. 54A:4-12b ) and incorporating provisions of recent statutory revisions pursuant to the New Jersey Economic Recovery Act of 2020, P.L. 2021, c.160 and c. 367; P.L. 2020, c. 156, P.L. 2019, c. 506. In accordance with Executive Order 63, these draft rules are being provided to enable the public to provide input as the New Jersey Economic Development Authority (Authority or NJEDA) begins to launch the programs contained in the new law.

## BACKGROUND

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

Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 into law on January 7, 2021. A courtesy copy of this act can be found by clicking [here](#). The law creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

Programs created in the law include:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;

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- Additional tax credits for film and digital media.

The New Jersey Economic Development Authority is soliciting input from the public on the following draft rules pertaining to implementation of the Garden State Film and Digital Media Jobs Program.

## **PROGRAM OVERVIEW**

The Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, (N.J.S.A. 54:10A-5.39b and N.J.S. 54A:4-12b) provides a transferable credit against the corporation business tax and the gross income tax for qualified expenses incurred for the production of certain film and digital media content in New Jersey. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey.

The proposed amendments revise the section to include citations for statutory revisions to the Garden State Film and Digital Media Jobs Act, pursuant to P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, and P.L. 2021, c. 367. The proposed amendments also define certain new terms used in this subchapter and incorporate terms defined at P.L. 2020, c. 156, P.L. 2021, c. 160, and P.L. 2021, c. 367, to clarify and support implementation of the program.

The proposed amendments include, but are not limited to:

- clarifying certain defined terms to help aid the implementation of the program, including “Commission,” “digital media content,” “loan out company,” “qualified digital media content production expenses,” “qualified film production expenses,” “total digital media content production expenses,” and “total film production expenses”.
- outlining and clarifying eligibility criteria for taxpayers to be eligible for the program, including that a “taxpayer” includes a studio partner and a film-lease partner, and/or a member of the studio partners’ or film-lease partner’s combined group.
- clarifying application submission requirements, e.g., pertaining to projected costs and to a film production that involves an eligible reality show.
- updating required program fees.
- revising the amount of film tax credits allowed for certain applications based on the date of application from 30 to 35 percent of qualified film production expenses, and the amount of digital media tax credits allowed from 20 to 30 percent of qualified production expenses.
- clarifying that documentation required to be reviewed and evaluated for total film production expenses and total digital media content production expenses, shall be prepared by an independent certified public accountant.
- increasing the cumulative cap on the value of certain tax credits from \$75,000,000 to \$100,000,000 in fiscal year 2019 through 2035, rather than the current 2024.
- raising the per-year cap on the value of certain tax credits from \$10,000,000 to \$30,000,000 in fiscal year 2019 and each year thereafter prior to fiscal year 2035 rather than the current 2024.

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- beginning in fiscal year 2025, in addition to the \$100,000,000 made available for New Jersey studio partners pursuant, making an additional \$350,000,000 available annually, at the discretion of the Authority, to New Jersey studio partners for the award of tax credits, including through tax credit transfer certificates.

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

- establishing eligibility requirements for any taxpayer applying to be designated as a studio partner, to be designated as film-lease partner, and to produce a reality show respectively.
- clarifying eligibility requirements such that for two or more buildings to qualify as a production facility, the building must be proximate to each other; and shall include, but not be limited to, buildings that are adjacent to each other or across a single right-of-way from each other.
- clarifying that, for purposes of a completed application, verification shall be provided, if applicable, that the applicant is a member of a studio partner's or a film-lease partner's combined group.
- delineating the requirements for a completed application to be designated as a studio partner or film lease partner. providing delineates the requirements for a completed application to be designated as a studio partner, including a deed, executed lease for at least ten years, or purchase contract for the production facility; detailed floorplan of the production facility; and evidence that the applicant has made a commitment to produce films or commercial audio visual products in New Jersey.
- providing for an increase in the amount of a tax credit allowed to four percent of the qualified film or digital media content production expenses if the diversity plan outlines specific goals that include hiring certain persons as credited performers it the film or digital media production.
- allowing the authority to, at its discretion, employ an independent consultant, at the cost of the applicant, to review the initial budget submitted by the applicant to determine if the qualified film or digital media expenses are within reasonable industry standards.
- delineating the instances in which taxpayer's qualified film production expenses and digital media content expenses shall be adjusted based on any discrepancies found based on a report prepared by a certified public accountant.
- providing that for film tax credit applications submitted by film-lease partners and studio partners, upon request, the Authority may provide a non-binding, administrative pre-certification approval letter contingent on Board approval.
- establishing the process for application and designation as a studio partner or film-lease partner; requires execution of an award agreement; and imposes certain compliance, reporting, and certification requirements for a taxpayer designated as studio partner or film-lease partner.
- establishing provisions for the recapture and reduction of tax credits for certain instances in which a studio partner and film-lease partner respectively are not in compliance with certain requirements.

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- codifying the requirements by which the Authority shall certify the amount of certain remaining tax credits available for approval, and increase the total cumulative total amounts accordingly.

## **ANTICIPATED PROGRAM MILESTONES**

The Authority currently anticipates bringing proposed rule amendments for the Garden State Film and Digital Media Jobs Program to its Board for consideration on May 11, 2022. If the Board approves the rule amendments, they will be published in the New Jersey Register for a 60-day public comment period.

The Authority may, at its discretion, accept applications based upon any draft rules approved for publication by its Board prior to the completion of the full Administrative Procedures Act process. However, all applicants will be subject to the requirements of the final adopted rules upon the conclusion of the formal comment process.

## **ECONOMIC RECOVERY ACT TRANSPARENCY WEBSITE**

The NJEDA's Economic Recovery Act website ([www.njeda.com/economicrecoveryact](http://www.njeda.com/economicrecoveryact)) allows members of the public to learn more about the programs included in the ERA and provide input on how the Authority will operationalize various aspects of its new incentive programs. The site also allows members of the public to share their thoughts on how NJEDA can make the programs more transparent.

This general feedback process precedes and is separate from the NJEDA's formal procedure to publish and adopt the rule amendments.

## **PUBLIC FEEDBACK: WRITTEN COMMENTS**

Members of the public will also be able to submit feedback on the Garden State Film and Digital Media Jobs Program through the NJEDA's Economic Recovery Act website (<https://www.njeda.com/economicrecoveryact/>) between the following dates:

- **PUBLIC FEEDBACK OPEN: April 25, 2022**
- **PUBLIC FEEDBACK CLOSED: May 6, 2022**

We welcome constructive input on how to ensure new programs created through the Economic Recovery Act or programs amended by the Economic Recovery Act such as the Garden State Film and Digital Media Jobs Program are structured and administered in a manner that drives opportunities for all residents and communities. Members of the public can do that by sending an email to [FilmTaxCredit@njeda.com](mailto:FilmTaxCredit@njeda.com) or through the online portal on the NJEDA's website.

All feedback received through this process will be assessed and considered when preparing the final version of the rule amendments that is proposed by the Authority for Board approval. Following potential Board approval, there will be a 60-day period for formal public comment.

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Please observe the following guidelines when submitting your feedback:

**PLEASE DO:**

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

**PLEASE DO NOT:**

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

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

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

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

## **SUMMARY OF DRAFT RULES SECTIONS**

The Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, (N.J.S.A. 54:10A-5.39b and N.J.S. 54A:4-12b) provides a transferable credit against the corporation business tax and the gross income tax for qualified expenses incurred for the production of certain film and digital media content in New Jersey. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey.

The New Jersey Economic Development Authority ("NJEDA" or "Authority") is proposing amendments to the rules implementing the program to incorporate provisions of recent statutory revisions pursuant to the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, P.L. 2019, c. 506, P.L. 2021, c.160, and P.L. 2021, c. 367.

The Film and Digital Media Tax Credit Program encourages the production of film and digital media content in the state. The program makes available \$100,000,000 in annual allocation for films and \$30,000,000 annual allocation for digital media projects. To be eligible for the production of a film, the film project must:

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- ☐ Be 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, or other gala event filmed and produced at a nonprofit arts and cultural venue receiving State funding. Productions featuring news, current events, weather, and market reports or public programming, talk show, sports event, or reality show, 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 are not eligible for film tax credits.
- ☐ And meet one of the following eligibility criteria:
  1. At least 60 percent of the total film production expenses (exclusive of post -production costs) must be incurred for services and goods purchased through vendors authorized to do business in New Jersey; or,
  2. Qualified film production expenses (expenses incurred in New Jersey for the production of a film) must exceed \$1 million per production for a single privilege period for goods and services purchased through vendors authorized to do business in New Jersey.

To be eligible for the production of digital media content, the production must meet both eligibility thresholds below:

1. At least \$2 million of the total digital media production expenses must be incurred for services performed and goods purchased through vendors authorized to do business in New Jersey; and,
2. 50 percent of the qualified digital media production expenses must be incurred for wages and salaries paid to full-time employees in New Jersey.

At least 50 percent of the qualified digital media content production expenses must be for wages and salaries paid to full-time employees in New Jersey.

For film projects, the available tax credit is based on the qualified film production expenses incurred in New Jersey. The tax credit is 35% of all qualified film production expenses, including labor, except the tax credit is reduced to 30% for all qualified film production expenses incurred for use within the 30-mile radius of Columbus Circle, New York City. Expenses for advertising, promotional materials, and wage and salary payments in excess of \$500,000 per person would not be eligible under the program. Additionally, all qualifying wage and salary payments are subject to a 6.37% withholding requirement, including payments made to independent contractors and loan out companies.

For digital media projects, the available tax credit is based on the qualified digital media production expenses incurred in New Jersey. The credit is 30% of all qualified digital media

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production expenses, with an increase to 35% for all qualified digital media production expenses for goods and services incurred through vendors authorized to business in New Jersey, who have a primary business location in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

For both film and digital media projects, there is an available bonus of 2 percent for productions who are able to satisfactorily evidence a commitment to prioritizing hiring minority and women employees across all levels of the production. Eligible productions who make additional commitments for hiring certain local on-screen talent from underrepresented ethnic groups can receive an additional 2 percent bonus.

To encourage the development of large, long term studio facilities, two additional and separate allocation designations were created by the Economic Recovery Act of 2020 for Studio Partners and Film-lease Partners. Studio Partners are a designated production company who has made the commitment to produce films or commercial audiovisual products in New Jersey and occupy a production facility of at least 250,000 square feet for a period of at least 10 years.

Film-lease Partners are an Authority designated production company who has made a commitment to lease or acquire a production facility of at least 50,000 square feet for a period of 5 to 10 successive years and commits to spend an annual average of \$50,000,000 in qualified film production expenses during that period.

Studio Partners and Film-lease partners would first apply to the Authority to be designated and then submit subsequent applications for each film project produced in New Jersey thereafter. There are only 3 designations available for Studio Partners and will be designated on a first in-time basis. However, in circumstances where interest in the Studio Partner designation is expected to surpass available designations, the Authority may, at its discretion and upon notice, institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. There are no restrictions on the number of production companies that can receive the Film-lease Partners designation.

The tax credit percentage for Studio and Film-lease Partners is calculated the same as the legacy program, however Studio and Film-lease partners benefit from a separate approval queue and separate annual allocation of \$100,000,000 for each designation. Above-the-line (ATL) wages and salaries are still capped at \$500,000 per person for Film-lease partners. Depending on the amount of qualified film production expenses involved in the project, a Studio Partner is able to capture additional wage and salary expenses as follows:

- For a studio partner that incurs \$15 million but less than \$50 million in qualified film production expenses, they can include up to \$15 million in ATL wage and salary expenses as qualified per project;
- For a studio partner that incurs \$50 million or more, but less than \$100 million in qualified film production expenses, they can include up to \$25 million in ATL wage and salary expenses as qualified per project;
- For a studio partner that incurs \$100 million or more, but less than \$150 million in qualified film production expenses, they can include up to \$40 million in ATL wage and salary expenses as qualified per project; and,

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- For a studio partner that incurs \$150 million or more, in qualified film production expenses, they can include up to \$60 million in ATL wage and salary expenses as qualified per project.

The initial Board approval for film and digital media production applications would set a not to exceed amount of tax credits available for the project. Once the film or digital media project is completed, the applicant would submit a final certification of expenses through a qualified independent CPA in accordance with the Agreed Upon Procedures on the Authority's website. Once the final certification was reviewed and approved, it would be sent to the Division of Taxation for review and ultimate issuance of the tax credit.

The tax credits awarded through the Film and Digital Media Tax Credit Program can be used to offset either Corporate Business Tax or Gross Income Tax and can be transferred to another taxpayer for no less than 75 percent of their value. The amount of the credit allowed may be carried forward to the seven tax years following the tax year the credit was initially allowed.

Beginning in State Fiscal Year 2025, in addition to the \$100,000,000 million made available for Studio Partners annually, the Authority may make an additional \$350,000,000 available to Studio Partner projects. In addition to the \$100,000,000 made available annually to Film-lease Partners, the Authority can make available an additional \$100,000,000 for Film-lease projects.

In any State Fiscal Year where there are any unused or unredeemed tax credits, the Authority will certify the amount of the excess and carry forward to the subsequent fiscal year. Unused or unredeemed tax credits for Studio Partners and digital media projects shall be carried forward only into the subsequent allocation for those specific categories. The unused or unredeemed amount of tax credits for legacy film and film-lease partners can be allocated between the categories at the Authorities discretion.

The following summarizes the contents of the proposed amendments to the rules implementing the Garden State Film and Digital Media Jobs Program ("Program"):

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

The proposed amendments revise the section to include citations for statutory revisions to the Garden State Film and Digital Media Jobs Act, pursuant to P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, and P.L. 2021, c. 367.

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

The proposed amendments define certain new terms used in this subchapter and incorporate terms defined at P.L. 2020, c. 156, P.L. 2021, c. 160, and P.L. 2021, c. 367, pertaining to the program. Specifically, the following terms are clarified to support the implementation of the program, such as "Commission," "digital media content," "Film," "loan out company," "Primary place of business," "qualified digital media content production expenses," "qualified film production expenses," "total digital media content production expenses," and total film production

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expenses.” The proposed amendments also create additional terms to support the implementation of the program, including “annual average of qualified film production expense requirement,” “commitment period,” “film-lease partner” or “New Jersey film-lease partner,” “incurred in New Jersey,” “production facility,” “reality show,” and “studio partner” or “New Jersey studio partner.”

#### N.J.A.C. 19:31-21.3 Eligibility criteria

The section, which outlines the criteria for a taxpayer to be eligible for the program for film and digital media tax credits, is revised as follows:

N.J.A.C. 19:31-21.3(a) is revised to clarify that a taxpayer includes a studio partner and a film-lease partner, and/or a member of a studio partners’ or film-lease partner’s combined group, as eligible for film tax credits.

The proposed amendments, at N.J.A.C. 19:31-21.3(a)1, delete “one taxable year” which is replaced with “the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, including wages and salaries” as pertains to the time period in which certain total film production expenses shall be incurred.

The proposed amendments, at N.J.A.C. 19:31-21.3(a)2, delete “the earlier of” and also deletes the provision “or 150 days from the date of the initial approval of the application” as pertains to the period under which principal photography of the film shall commence 180 days from the date of the completed application for the tax credit.

The proposed amendment, at N.J.A.C. 19:31-21.3(a)4, adds “qualified” to independent certified public accountant.

The proposed amendment, at N.J.A.C. 19:31-21.3(b)1.iii, adds “qualified” to independent certified public accountant.

Proposed new N.J.A.C. 19:31-21.3(d), (e), and (f) establish eligibility requirements for any taxpayer applying to be designated as a studio partner, to be designated as film-lease partner, and to produce a reality show respectively.

Proposed new N.J.A.C. 19:31-21.3(g) requires that for two or more buildings to qualify as a production facility, the building must be proximate to each other; and shall include, but not be limited to, buildings that are adjacent to each other or across a single right-of-way from each other.

#### N.J.A.C. 19:31-21.4 Application submission requirements

The proposed amendments, at N.J.A.C. 19:31-21.4(a)4 pertaining to a breakout of project certain projected costs required for a completed application for film tax credits, revise a citation referenced within the subchapter at N.J.A.C. 19:31-21.6; and specify that for applications filed on or after the effective date of P.L. 2021, c. 160 a breakout of projected certain costs shall be provided 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

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Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York.

N.J.A.C. 19:31-21.4(a)8 has been removed in light of the amendments to “Qualified film production expenses”.

As a result of the deletion of the former N.J.A.C. 19:31-21.4(a)8, N.J.A.C. 19:31-21.4(a)9 has been recodified at N.J.A.C. 19:31-21.4(a)8, N.J.A.C. 19:31-21.4(a)10 has been recodified at N.J.A.C. 19:31-21.4(a)9, N.J.A.C. 19:31-21.4(a)11 has been recodified at N.J.A.C. 19:31-21.4(a)10, N.J.A.C. 19:31-21.4(a)12 has been recodified at N.J.A.C. 19:31-21.4(a)11.

The proposed amendment to N.J.A.C. 19:31-21.4(a)9 now includes a reference to the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(I)2i through iii.

In addition, the proposed amendments, at N.J.A.C. 19:31-21.4(a)10, pertaining to a film production that involves an eligible reality show, require that an executed letter of interest, lease, sublease or deed.

Proposed new N.J.A.C. 19:31-21.4(a)11 provides that, for purposes of a completed application, written verification shall be provided, if applicable, that the applicant is a member of a studio partner's or a film-lease partner's combined group.

Proposed new N.J.A.C. 19:31-21.4(b) delineates the requirements for a completed application to be designated as a studio partner, including an executed deed, executed lease or sublease for at least ten years, or purchase contract for the production facility; detailed floorplan, indicating the uses of each area, of the production facility; site plan approval for the production facility; evidence that the applicant has made a commitment to produce films or commercial audiovisual products in New Jersey; preliminary site plan approval for the production facility; and any other necessary and relevant information as determined by the Authority for a specific application.

Proposed new N.J.A.C. 19:31-21.4(c) delineates the requirements for a completed application to be designated as a film-lease partner, including an executed letter of interest, lease sublease, deed, or purchase contract for the production facility; a detailed floorplan, indicating the uses of each area, of the production facility; a narrative detailing how the taxpayer will meet the minimum annual average of qualified film production expense requirement; information on all production projects, known or anticipated, for the commitment period, including but not be limited to, production names, estimated project dates, and estimated qualified film production expenses; financial information demonstrating the taxpayer's ability to meet the minimum annual average of qualified film production expenses as described in the definition of a film; and any other necessary and relevant information as determined by the Authority for a specific application.

Recodified N.J.A.C. 19:31-21.4(d) pertaining to a completed application for digital media tax credits is revised at N.J.A.C. 19:31-21.4(d)1 to also require a breakout of qualified digital media expenses for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May,

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Cumberland, Gloucester, Mercer, or Salem County. The proposed amendment to N.J.A.C. 19:31-21.4(d)5 now includes reference to the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(I)2i through iii.

Finally, as referenced above, N.J.A.C. 19:31-21.7(f) is proposed for deletion, and new appeal provisions are included as proposed new N.J.A.C. 19:31-21.13.

#### N.J.A.C. 19:31-21.5 Fees

The proposed amendments, at N.J.A.C. 19:31-21.5(a)1 through N.J.A.C. 19:31-21.5(a)7, add additional tiers to the non-refundable application fee scale based on the total amount of qualified film production expenses..

The proposed amendments, at N.J.A.C. 19:31-21.5(b)1 through N.J.A.C. 19:31-21.5(b)7, provides for a non-refundable approval fee based on the amount of qualified film production expenses for a project.

The proposed amendments at, N.J.A.C. 19:31-21.5(c)1 through N.J.A.C. 19:31-21.5(c)5, replace the percentage based issuance fee with a flat fee based on the amount of qualified film production expenses for a project.

The proposed amendments at, N.J.A.C.19:31-21.5(d)1 and N.J.A.C. 19:31-21.5(d)2, amends the fee amount for a tax credit transfer application based on the amount of qualified film production expenses for a project.

The proposed amendments at, N.J.A.C. 19:31-21.5(e), provides for a non-refundable annual fee for film-lease partners.

The proposed amendments at, N.J.A.C. 19:31-21.5(f), provides for a non-refundable fee for extensions of deadlines for the submission of a temporary certificate of occupancy for studio partners.

N.J.A.C. 19:31-21.5(g) has been recodified from its previous section N.J.A.C. 19:31-21.5(f).

#### N.J.A.C. 19:31-21.6 Tax credit amounts; bonus amount; carryforward of tax credits

The proposed amendment, at N.J.A.C. 19:31-21.6(a) and N.J.A.C. 19:31-21.6(a)1 1, set forth that applications received prior to July 2, 2021, the effective date of P.L. 2020, c. 160, 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

The proposed amendments, at N.J.A.C. 19:31-21.6(a)2, sets forth that applications received on or after July 2, 2021, the effective date of P.L. 2021, c. 160, 30 percent of the qualified

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film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York

The proposed amendments, at N.J.A.C. 19:31-21.6(a)3 and 4, revise the amount of film tax credits allowed, for certain applications based on date of application – applications received prior to and on or after the effective date of P.L. 2020, c. 156 – from 30 to 35 percent of the qualified film production expenses of the taxpayer, and the time period during which the tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before 2034, rather than 2023.

The proposed amendments, at N.J.A.C. 19:31-21.6(b)1, revise the amount of digital media tax credits allowed, for certain applications based on date of application – prior to the effective date of P.L. 2021, c. 367, January 12, 2022 – to 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County and 20 percent of qualified expenses not included in N.J.A.C. 19:31-21.6(b)1.i. and the time period during which the tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before 2034, rather than 2023.

The proposed amendments, at N.J.A.C. 19:31-21.6(b)2, revise the amount of digital media tax credits allowed, for certain applications based on date of application –on or after the effective date of P.L. 2021, c. 367, January 12, 2022 – to 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County and 30 percent of qualified expenses not included in N.J.A.C. 19:31-21.6(b)1.i. and the time period during which the tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before 2034, rather than 2023.

The proposed amendments at N.J.A.C. 19:31-21.6(l) now refers to sections 19:31-21.6(a) and 19:31-21.6(b).

The proposed amendments at N.J.A.C. 19:31-21.6(l)1 clarify that a taxpayer shall be allowed an increase in the tax credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or “under the “New Jersey Gross Income Tax Act,” N.J.S. 54A:1-1 et seq.”

Proposed new N.J.A.C. 19:31-21.6(l)2 provides for an increase in the amount of a tax credit allowed to four percent of the qualified film or digital media content production expenses if the diversity plan, in addition to meeting the requirements pursuant to N.J.A.C. 19:31-21.6(l)1,

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outlines specific goals that include hiring certain persons as credited performers in the film or digital media production as outlined in subparagraphs N.J.A.C. 19:31-21.6 (l)2i, ii, and iii.

The proposed amendments, at recodified N.J.A.C. 19:31-21.6(l)3, clarify that the existing tax credit amount equal to 35 percent of certain qualified film production expenses incurred in the eight southernmost counties are for applications received prior to the effective date of P.L. 2020, c. 156.

Proposed new N.J.A.C. 19:31-21.6(l)4 establishes that for applications received on or after the effective date of P.L. 2021, c. 160, the amount of film tax credits allowed shall be in an amount equal to 30 percent of the qualified film production expenses of the taxpayer 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.

Recodified N.J.A.C. 19:31-21.6(l)5i clarifies that the existing tax credit amount equal to 25 percent of certain qualified digital media content production expenses incurred in the eight southernmost counties are for applications received prior to the effective date of P.L. 2021, c. 367.

Finally, recodified N.J.A.C. 19:31-21.6(l)5ii provides that for applications received on or after the effective date of P.L. 2021, c. 367, the tax credit amount shall be 35 percent of certain digital media content production expenses 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.

N.J.A.C. 19:31-21.7 Evaluation process for tax credits; initial approval for tax credits, award of tax credits

The proposed amendments revise the heading for the section to add "for tax credits" following the reference to evaluation process, and delete "appeals" as the provisions for appeals in subsection (f) is deleted and replaced as proposed new N.J.A.C. 19:31-21.13.

N.J.A.C. 19:31-21.7(a) is revised to clarify that the subsection applies to applications for film tax credits which shall be submitted to the Authority and Commission for review for content eligibility.

Proposed new N.J.A.C. 19:31-21.7(a)1 refers to the proposed Cap on total credits found at N.J.A.C. 19:31-21.11.

Proposed new N.J.A.C. 19:31-21.7(a)2 adds a new provision that to assist the Authority in designating the maximum amount of the credit, the Authority may employ an independent consultant, at the cost of the applicant, to review the initial budget submitted by the applicant to determine if the qualified film or digital media expenses are within reasonable industry standards. In addition, for projects submitted by studio partners, the initial approval letter shall include a condition that the Authority's approval of the final documentation shall require the taxpayer remaining a studio partner.

N.J.A.C. 19:31-21.7(c)1 deleted “or 150 days from the date of initial approval by the Authority”.

N.J.A.C. 19:31-21.7(c)2, pertaining to documentation required to be reviewed and evaluated for total film production expenses and total digital media content production expenses, is revised to clarify that the report shall be prepared by a qualified independent certified public accountant, as described in (c)4.

Proposed new N.J.A.C. 19:31-21.7(c)2i(1) through (5) specifies the total and qualified film production expenses or the total and qualified digital media content production expenses of the taxpayer to be included in the qualified independent certified public accountant report.

Proposed new N.J.A.C. 19:31-21.7(c)2ii delineates the instances in which taxpayer's qualified film production expenses and digital media content expenses shall be adjusted based on any discrepancies found identified for certain expenses based on the report prepared pursuant to N.J.A.C. 19:31-21.7(c)2.

Proposed new N.J.A.C. 19:31-21.7(c)3 provides that for taxpayers that received initial approval for the production of a reality show, the certified public accountant report described in N.J.A.C. 19:31-21.7(c)2, shall include verification of the actual capital investment in the production facility. If the capital investment in the report is less than minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production. The taxpayer shall also provide the temporary certificate of occupancy, a detailed floorplan, indicating the uses of each area, of the production facility, an executed deed, lease, or sublease evidencing site control. If the taxpayer is a tenant and the lease or sublease has a term, including renewals and options, of less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production.

Proposed new N.J.A.C. 19:31-21.7(c)4 provides that the Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants, although the taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for the purposes of the report upon the Authority's prior approval, if the taxpayer demonstrates certain extenuating circumstances prohibiting the taxpayer from retaining a qualified certified public accountant.

Proposed new N.J.A.C. 19:31-21.7(c)6 requires a certification from the taxpayer that the information provided pursuant to N.J.A.C. 19:31-21.7(c) is true under the penalty of perjury.

Recodified N.J.A.C. 19:31-21.7(d) adds a citation for N.J.A.C. 19:31-21.6(l)2;

Recodified N.J.A.C. 19:31-21.7(d) to Recodified N.J.A.C. 19:31-21.7(e) and adds “qualified” to independent certified public accountants certification.

Recodified N.J.A.C. 19:31-21.7(e) to Recodified N.J.A.C. 19:31-21.7(f).

N.J.A.C. 19:31-21.7(f) is deleted and replaced as proposed new N.J.A.C 19:31-21.13.

Proposed new N.J.A.C. 19:31-21.7(f) provides that for film tax credit applications submitted by film-lease partners and studio partners, upon request, the Authority may provide a non-binding, administrative pre-certification approval letter contingent on Board approval.

N.J.A.C. 19:31-21.7(g) adds “completed” to application for designation as a studio partner.

N.J.A.C. 19:31-21.8 Evaluation process for designation of studio partner or film-lease partner; initial approval; annual reports

Proposed new N.J.A.C. 19:31-21.8 establishes the process for application and designation as a studio partner or film-lease partner; requires execution of an award agreement; and imposes certain compliance and reporting requirements for a taxpayer designated as studio partner or film-lease partner.

Proposed new N.J.A.C. 19:31-21.8(b) sets forth how applications will be considered and the potential for the institution of a competitive application process.

Proposed new N.J.A.C. 19:31-21.8(c) adds “completed” to application for designation as a film-lease partner.

Proposed amendments to N.J.A.C. 19:31-21.8(e) set forth the expiration(s) of the designation of studio partner or film lease partner at the end of the commitment period and the requirement that the taxpayer execute and abide by the conditions of an approval letter.

Proposed amendments to N.J.A.C. 19:31-21.8(e)1 through 4 set for the conditions of the approval including but not limited to submission of periodic progress reports, committed financing, if applicable, site plan approval, if applicable, evidence of final site control of the production facility, final floorplan indicating the uses of each area, and the temporary certificate of occupancy. The amendments also set forth the timeframe for submittal of the temporary certificate of occupancy and expiration of the time period as set forth at N.J.A.C. 19:31-21.8(e).

Proposed amendment to N.J.A.C. 19:31-21.8(f)1 and N.J.A.C. 19:31-21.8(f)2 set forth the award agreement shall be executed by a studio partner and shall include, but not be limited to, the commencement of the commitment period, and agreement that the studio partner shall maintain the lease or ownership for the duration of the commitment period, shall not sublease any part of the production facility for more than 12 consecutive months or for a period longer than the duration of the commitment period nor sell any part of the New Jersey production facility provided that a studio partner may sell the production facility if it remains the tenant in the production facility. If the studio partner subleases any part of the production facility, the studio partner shall not receive any benefits from this program for any activity of the tenant and the tenant shall not receive any benefits from this program from the studio partner's designation.

Proposed amendment to N.J.A.C. 19:31-21.8(g) to add that the Authority may request any documentation supporting taxpayer's certification.

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Proposed amendment to N.J.A.C. 19:31-21.8(h) adds “commencement and” in addition to the to the length of the commitment period for inclusion in the award agreement.

Proposed amendment to N.J.A.C. 19:31-21.8(i)4 adds “attained at least the minimum” to the annual average of qualified film production expense.

Proposed amendment to N.J.A.C. 19:31-21.8(i)5 adds a provision to the award agreement indicating the film-lease partner shall maintain the lease or ownership for the duration of the commitment period, and shall not sublease any part of the production facility for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period or sell any part of the New Jersey production facility, provided that a film-lease partner may sell the production facility if it remains the tenant in the production facility. If the film-lease partner subleases any part of the production facility, the film-lease partner shall not receive any benefits from this program for any activity of the tenant and the tenant shall not receive any benefits from this program from the film-lease partner's designation.

#### N.J.A.C. 19:31-21.9 Recapture and reduction of tax credits for studio partner or film-lease partner

Proposed new N.J.A.C. 19:31-21.9 establishes provisions for the recapture and reduction of tax credits for certain instances in which a studio partner and film-lease partner respectively are not in compliance with certain requirements pertaining to each, including penalties and interest, which shall be deposited into the General Fund of the State.

Proposed new N.J.A.C. 19:31-21.9(e) sets for that the Authority shall publish information concerning each tax credit transfer certificate on its website including the name of the transferer, name of the transferee, the value of the tax credit transfer certificate, the State tax against which the transferee may apply the tax credit and the consideration received by the transferer.

#### N.J.A.C. 19:31-21.11 Cap on total credits

The proposed amendments, at subsection (a) of recodified N.J.A.C. 19:31-21.11, provides that the cap on the value of certain tax credits, including the granting of tax credit transfers, approved by the Director of Taxation and the Authority, to taxpayers other than New Jersey studio partners and New Jersey film-lease partners, shall be increase from \$75,000,000 to \$100,000,000 in fiscal year 2019 through 2034, rather than the current 2024.

In addition to the \$100,000,000 limitation on the value of tax credits approved by the Director for New Jersey film-lease partners and the \$100,000,000 limitation on the value of tax credits approved for certain other taxpayers, the value of tax credits, including through tax credit transfer certificates, 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 2034.

Further, in addition to the \$100,000,000 limitation on the value of tax credits approved for New Jersey film partners and the \$100,000,000 limitation on the value of tax credits approved

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imposed by the subsection, the value of tax credits, including through tax credit transfer certificates 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 2035.

Beginning in fiscal year 2025, in addition to the \$100,000,000 made available for New Jersey studio partners pursuant, up to an additional \$350,000,000 may be made available annually, in the discretion of the Authority, to New Jersey studio partners for the award of tax credits, including through tax credit transfer certificates, from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-362).

The proposed amendments at subsection (b) of recodified N.J.A.C. 19:31-21.11, provides that the value of all tax credits approved by the Authority and Director shall not exceed a cumulative total of \$30,000,000, rather than the current \$10,000,000 in fiscal year 2019 and each year thereafter prior to fiscal year 2035 rather than the current 2024.

Proposed new subsection (c) of N.J.A.C. 19:31-21.11, codifies the requirements by which the Authority shall certify the amount of certain remaining tax credits available for approval, and increase the total cumulative total amounts accordingly.

Finally, proposed new subsection (d) of recodified N.J.A.C. 19:31-21.11 requires that for any fiscal year in which the amount of tax credits approved pursuant to subsection (b) is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the 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.

#### N.J.A.C. 19:31-21.12 Affirmative action; and prevailing wage

Proposed new subsection (a) and (b) of N.J.A.C. 19:31-21.12 set forth the Authority's affirmative action and prevailing wage requirement and their application to construction contracts at the production facility undertaken in connection with or as a condition of tax credits received under the program. Nothing in this subsection shall be construed as requiring affirmative action or the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first tax credits to the taxpayer.

#### N.J.A.C. 19:31-21.13 Appeals

Proposed new N.J.A.C. 19:31-21.13, which replaces former provisions contained in N.J.A.C. 19:31-21.7(f) proposed for deletion, outlines the requirements for an applicant to appeal an action of the NJEDA Board and the process by which the Authority shall consider each appeal in a timely manner as well as sets forth that the Authority may consider new evidence or

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information that would demonstrate that the applicant meets all of the application criteria unless the application was submitted in response to a competitive application process

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1-30-3.3(a)5.

## **FULL TEXT OF DRAFT RULES**

### **Social Impact**

The Garden State Film and Digital Media Jobs Program authorizes corporation business and gross income tax credits for certain expenses incurred for the production of certain films and digital media content in New Jersey, with additional benefits for production companies making long-term film production commitments or significant capital investment in New Jersey. The proposed amendments will have a positive social impact by attracting motion picture, television, and digital media production in New Jersey, which will promote New Jersey's diverse locations and landscapes, incentivize diversity in recruitment and hiring, catalyze tourism activity, and reestablish New Jersey's competitiveness in the motion picture and television industry.

### **Economic Impact**

The total amount of film tax credits available under the Program is \$75 million per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2023, for a total available pool of \$375 million. The total amount of digital media tax credits available under the Program is \$10 million per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2023, for a total available pool of \$50 million. Accordingly, the Authority anticipates the Program will help strengthen the State's economy by attracting film, television, and digital media production and the associated economic benefit that is generated through these productions, which includes: jobs, wages, tourism activity and spending, infrastructure and community investment in production facilities, patronage of local businesses and vendors, and value from media exposure. In addition, the availability of the new credit may result in additional film, television, and digital media production throughout the State, including the development of permanent film production studios, and will be an important tool in reclaiming New Jersey's competitiveness in this industry. The proposed amendments will impose minimal costs on applicants to comply with application and reporting requirements. Finally, the fees for the Program are intended to ensure a source of necessary administrative fee revenue for the NJEDA to more fully cover the costs of administering the Program, including any third-party assistance where necessary.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

### **Jobs Impact**

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

### **Agriculture Industry Impact**

The proposed amendments will not have any impact on the agriculture industry of the State of New Jersey.

### **Regulatory Flexibility Statement**

The proposed amendments may impose minimal reporting, recordkeeping, and other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, eligible businesses will be required to comply with the Authority's standard online application process and regular incentive compliance requirements, however, any costs due to reporting, recordkeeping, and other compliance requirements on qualifying businesses will be fully offset by the amount of financial assistance received and the only professional services required for such purposes are fully offset by the amount of financial assistance received and the only professional services required for such purposes are from a certified public accountant. In addition, the fees under the Program, are based on standard NJEDA fees, and will not require eligible developers, businesses, or municipalities to utilize professional services for compliance.

### **Housing Affordability Impact Analysis**

The proposed amendments will not have any effect on the average cost of housing nor will it affect the affordability of housing in the State as the rules pertain to the Garden State Film and Digital Media Jobs Program.

### **Smart Growth Development Impact Analysis**

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or in designated centers, under the State Development and Redevelopment Plan as the rules pertain to the Garden State Film and Digital Media Jobs Program.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

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

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

## SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM

### 19:31-21.1 Applicability and scope

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

### 19:31-21.2 Definitions

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

**“Annual average of qualified film production expense” means the annual average calculated by dividing the aggregate amount of qualified film production expenses in the reports approved by the Authority pursuant to N.J.A.C. 19:31-21.7(c) for any period of years during the commitment period by the number of those years.**

“Authority” means the New Jersey Economic Development Authority.

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

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

**“Commitment Period” means for film-lease partners, a period selected by the taxpayer of at least five, but not to exceed, ten consecutive years. The film-lease partner’s commitment period shall begin on the earlier of the commencement of principal photography for the film-lease partner’s initial production as a film-lease partner or the first day after one year of site control by the film-lease partner of the New Jersey production facility. For studio partners, the commitment period shall be 10 years.**

“Digital media content” means any data or information that is produced in digital form, including data or information created in analog form, but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. “Digital media content” [does] **shall** not mean content offerings generated by the end user (including postings on electronic bulletin

boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.A. 2C:34-2 and 2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

“Director” means the Director of the New Jersey Division of Taxation.

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

**“Film-lease partner” or “New Jersey film-lease partner” means a taxpayer, including any taxpayer that is a member of a combined group under section 4 of P.L.1945, c. 162 (N.J.S.A. 54:10A-4), that has made a commitment to 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, for a period of five or more successive years and commits to spend, on a separate-entity basis or in the aggregate with other members of the taxpayer’s combined group, a minimum annual average of qualified film production expense of at least \$50,000,000 for the commitment period.**

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

“Full-time or full-time equivalent employee” means an individual employed by the taxpayer 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

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wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or who is a partner, the 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.A. 54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the taxpayer.

"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 July 3, 2018, the effective date of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b et al.), pursuant to which a tax credit has not been allowed prior to July 2, 2021, the effective date 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 located in New Jersey 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 located in New Jersey 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.**

"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" [does] **shall** not include entities contracted with by the taxpayer to provide goods or ancillary contractor services, such as catering, construction, trailers, equipment, or transportation.

"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

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synchronization and visual effects. There shall be no distinguishing between the production and post-production phases for animated films due to the intertwined relationship between those two phases in animation.

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

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

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

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

**“Production facility” means a building or buildings in this State identified by the taxpayer for the purpose of producing films or other commercial audiovisual products. The facility may include, but not be limited to, studio facilities, sound stages, production support space including production offices, backlots, and post-production facilities, provided that the studio facilities and sound stages shall be the predominant uses.**

“Program” means the Garden State Film and Digital Media Jobs Program.

“Qualified digital media content production expenses” means expenses incurred in New Jersey after July 1, 2018, for the production of digital media content. “Qualified digital media content production expenses” shall include, but [shall] not be limited to, wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payments made to a loan out company or to an independent contractor shall not be **deemed** a “qualified digital media content production expenses” unless the payments are made in connection with a trade, profession, or occupation carried out in this State or for the rendition of personal services performed in the State and the taxpayer has made the withholding required [by] **pursuant to** N.J.A.C. 19:31-21.3(c). “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer 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 after July 1, 2018, for the production of a film, including pre-production costs, and post-production costs incurred in New Jersey. “Qualified film production expenses” shall include, but [shall] not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs for tangible personal property used and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be **deemed** a “qualified film production expense[s]” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required [by] **pursuant to** N.J.A.C. 19:31-21.3(c). “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 for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[.], **except as follows:**

**1. For a New Jersey studio partner that incurs more than \$15,000,000, but less than \$50,000,000, in qualified film production expenses in the State, an 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;**

**2. For a New Jersey studio partner that incurs \$50,000,000 or more, but less than \$100,000,000, in qualified film production expenses in the State, an amount, not to exceed \$25,000,000, 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;**

**3. For a New Jersey studio partner that incurs \$100,000,000 or more, but less than \$150,000,000, in qualified film production expenses in the State, an amount, not to exceed \$40,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and**

**4. For a New Jersey studio partner that incurs \$150,000,000 or more in qualified film production expenses in the State, an amount, not to exceed \$60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.**

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

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“Selling business” means a taxpayer that has unused tax credits, which it wishes to sell.

**“Studio partner” or “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. Studio partner may include any other member of the taxpayers combined group under P.L. 2018, c. 131 (N.J.S.A. 54:10A-4.11).**

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

“Taxation” means the New Jersey Division of Taxation.

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

“Tax credit vintage year” means the applicant's privilege period or taxable year in which the Authority issued the initial approval of the application and the tax credit may be applied.

“Total digital media content production expenses” means costs for services performed and property used or consumed in the production of digital media content **including, but not limited to, wages and salaries.**

“Total film production expenses” means costs for services performed and tangible personal property used or consumed in the production of a film **including, but not limited to, wages and salaries.**

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

#### 19:31-21.3 Eligibility criteria

(a) A taxpayer, **including a studio partner, a film-lease partner, or a member of a studio partner's or film-lease partner's combined group**, shall be eligible for the program for film tax credits if the Authority finds that:

1. The taxpayer will incur after July 1, 2018, at least 60 percent of the total film production expenses, exclusive of post-production costs, for services performed and goods purchased through vendors authorized to do business in New Jersey, or the qualified film production expenses of the taxpayer during [one taxable year] **the privilege period for services performed, and goods purchased, through vendors authorized to do business in New Jersey, including wages and salaries**, exceed \$1,000,000 per production;

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

3. The film includes, when determined to be appropriate by the Commission, taking into account factors including, but not limited to, the budget and audience of the film, at no cost to the State, marketing materials promoting this State as a film and entertainment production destination, which materials shall include placement of a "Filmed in New Jersey" or "Produced in New Jersey" statement, or an appropriate logo approved by the Commission, in the end credits of the film;

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

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

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

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

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

ii. 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; and

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

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

(c) A taxpayer shall withhold from each payment to a loan out company or to an independent contractor, 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 N.J.S.A. 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.

**(d) For any taxpayer applying to be designated as a studio partner, the taxpayer will be eligible if the Authority finds the taxpayer has demonstrated to the Authority that the taxpayer meets the definition of a studio partner and that it shall satisfy the conditions of approval in N.J.A.C. 19:31-21.8(e) within the prescribed time.**

**1. No more than three film production companies may be designated as a New Jersey studio partner.**

**2. For a film-lease partner, if the document evidencing current or prospective site control submitted in the application pursuant to N.J.A.C. 19:31-21.4(c) has a term that extends for less than the commitment period based on the anticipated commencement of the commitment period, the taxpayer's commitment period shall be reduced accordingly. If the taxpayer's commitment period would be reduced below the minimum commitment period for a film-lease partner, the taxpayer shall not be eligible as a film-lease partner. For a studio partner, the document evidencing current or prospective site control submitted in the application pursuant to N.J.A.C. 19:31-21.4(b) shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period.**

**(e) For any taxpayer applying to be designated as a film-lease partner, the taxpayer will be eligible if the Authority finds that the taxpayer has demonstrated to the Authority that the taxpayer meets the definition of a film-lease partner, except that, at the time of application to be designated, the annual average of qualified film production expense shall be evaluated based on the taxpayer's projections.**

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

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

**i. A production facility consists of building A and building B, which are both on the same block, but separated by other buildings.**

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**ii. A production facility will consist of building A and building B, which will be adjacent to each other, but have separate entrances.**

**iii. A production facility consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.**

#### 19:31-21.4 Application submission requirements

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

1. A preliminary budget for the film project with a breakout of projected costs, including pre-production costs and post-production costs;

2. A breakout of projected total film production expenses, excluding pre-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.3(a)1, for services performed and goods purchased through vendors authorized to do business in New Jersey;

3. A breakout of projected qualified film production expenses, pursuant to N.J.A.C. 19:31-21.3(a)2<sup>1</sup>, in New Jersey;

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

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

i. A plot summary;

ii. The genre and subject matter;

iii. The anticipated film rating, if applicable;

iv. The names of principals and actors; and

v. The location(s) for filming;

6. The filming schedule;

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

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

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

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

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

**11. If the applicant is a member of a studio partner's or a film-lease partner's combined group, written verification that the taxpayer is a member of the studio partner's or film-lease partner's combined group.**

**(b) A completed application to be designated as a studio partner shall include, but not be limited to, the following:**

**1. An executed deed, lease or sublease for at least ten years, or purchase contract for the production facility;**

**2. A detailed floorplan, indicating the uses of each area, of the production facility;**

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

**4. Preliminary site plan approval for the production facility; and**

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

**(c) A completed application to be designated as a film-lease partner shall include, but not be limited to, the following:**

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- 1. An executed letter of interest, lease, sublease, deed, or purchase contract for the production facility;**
- 2. A detailed floorplan, indicating the uses of each area, of the production facility;**
- 3. A narrative detailing how the taxpayer will meet the minimum annual average of qualified film production expense;**
- 4. Information on all production projects, known or anticipated, for the commitment period, including but not be limited to, production names, estimated project dates, and estimated qualified film production expenses;**
- 5. Financial information demonstrating the taxpayer's ability to meet the minimum annual average of qualified film production expenses; and**
- 6. Any other necessary and relevant information as determined by the Authority for a specific application.**

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

1. A preliminary or actual budget demonstrating at least \$2,000,000 of total digital media content production expenses incurred for services performed and goods purchased through vendors authorized to do business in New Jersey; **and, pursuant to N.J.A.C. 19:31-21.6(b)1i or 2i, a breakout of qualified digital media expenses for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County;**
2. A breakout of projected digital media content production expenses for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;
3. The total number of current full-time or full-time equivalent digital media employees, plans for anticipated new full-time or full-time equivalent employees, and current non-digital media full-time or full-time equivalent employees;
4. A description of the project, which must include an overall summary of digital media content; and
5. If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements under N.J.A.C. 19:31-21.6(l)1i through iv, **and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)2i through iii.**

19:31-21.5 Fees

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

1. For projects with total **qualified film production expenses or digital media production expenses of [tax credits of] less than \$1,000,000 [or less]**, the fee to be charged at application shall be **[\$500.00] \$100.00; [and]**

2. For projects with total **qualified film production expenses or digital media production expenses of \$1,000,000 but less than \$6,000,000**, the fee to be charged at application shall be **[\$2,500] \$250.00; [.]**

3. For projects with total **qualified film production expenses or digital media production expenses of \$6,000,000 but less than \$15,000,000**, the fee to be charged at application shall be **\$2,000.00;**

4. For projects with total **qualified film production expenses or digital media production expenses of \$15,000,000 but less than \$30,000,000**, the fee to be charged at application shall be **\$5,000.00;**

5. For projects with total **qualified film production expenses or digital media production expenses of \$30,000,000 or more**, the fee to be charged at application shall be **\$20,000.00;**

6. For applicants applying to be designated as a studio partner, the fee to be charged at application shall be **\$10,000.00; and**

7. For applicants applying to be designated as a film-lease partner, the fee to be charged at application shall be, **\$5,000.00.**

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

1. For projects with total **qualified film production expenses or digital media production expenses of less than \$1,000,000**, the fee to be charged prior to approval shall be **\$100.00;**

2. For projects with total **qualified film production expenses or digital media production expenses of \$1,000,000 but less than \$6,000,000** the fee to be charged prior to approval shall be **\$500;**

3. For projects with total **qualified film production expenses or digital media production expenses of \$6,000,000 but less than \$15,000,000**, the fee to be charged prior to approval shall be **\$5,000.00;**

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

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**5. For projects with total qualified film production expenses or digital media production expenses of \$30,000,000 or more, the fee to be charged prior to approval shall be \$50,000.00;**

**6. For applicants applying to be designated as a studio partner, the fee to be charged prior to approval shall be \$50,000.00; and**

**7. For applicants applying to be designated as a film-lease partner, the fee to be charged prior to approval shall be, \$50,000.00.**

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

**1. For projects with total qualified film production expenses or digital media production expenses of less than \$1,000,000, the fee to be charged shall be \$100.00;**

**2. For projects with total qualified film production expenses or digital media production expenses of \$1,000,000 but less than \$6,000,000 the fee to be charged shall be \$500;**

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

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

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

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

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

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

**(e) A taxpayer who is a film-lease partner shall pay to the Authority an annual servicing fee of \$10,000.00. The servicing fee shall be paid at the time the film-lease partner submits its annual report pursuant to N.J.A.C. 19:31-21.8(h)2.**

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

[(d)] **(g)** The full amount of direct costs of any third party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid by the applicant.

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

(a) A taxpayer, upon final approval of an application to the Authority and the Director for film tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., **which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2034**, in an amount equal to:

**1. For applications received prior to July 2, 2021, the effective date of P.L. 2020, c. 160, 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**

**2. For applications received on or after July 2, 2021, the effective date of P.L. 2021, c. 160, 30 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased 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.**

**3. For applications received prior to January 7, 2021, the effective date of P.L. 2020, c. 156, 30 percent of the qualified film production expenses of the taxpayer [ , which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023] 2034 not included in paragraphs 1 or 2 above.**

**4. For applications received on or after January 7, 2021, the effective date of P.L. 2020, c. 156, 35 percent of the qualified film production expenses of the taxpayer not included in paragraphs 1 or 2 above.**

(b) A taxpayer, upon final approval of an application to the Authority and the Director for digital media tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., **which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2034**, in an amount equal to:

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

**i. 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is**

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**located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**

**ii. 20 percent of the qualified digital media content production expenses of the taxpayer not included in subparagraph i above** [, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023] **2034.**

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

**i. 35 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**

**ii. 30 percent of the qualified digital media content production expenses of the taxpayer not included in subparagraph i above.**

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

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

(e) A business entity that is not a gross income "taxpayer" as defined and used in N.J.S.A. 54A:1-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but otherwise meets all the other requirements of this subchapter, shall be considered an eligible applicant and "taxpayer" as that term is used in this section, and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subchapter.

(f) A business entity that is classified as a partnership for Federal income tax purpose shall not be allowed a tax credit pursuant to this section directly, but the amount of the tax credit of a taxpayer in respect of a distributive share of entity income shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer's share,

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whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(g) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending with the taxpayer's taxable year.

(h) The order of priority in which the tax credit allowed by this section and any other credits allowed by law may be taken, shall be as prescribed by the Director.

(i) The amount of the tax credit applied under this section against the tax imposed pursuant to N.J.S.A. 54:10A-5, for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the taxpayer to an amount less than the statutory minimum provided in N.J.S.A. 54:10A-5.

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

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

(l) Notwithstanding any limit in (a) **and** (b) above, the tax credits awarded may be increased pursuant to the following:

1. A taxpayer shall be allowed an increase in the tax credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 **or under the "New Jersey Gross Income Tax Act," N.J.S. 54A:1-1 et seq.**, in an amount equal to two percent of the qualified film or digital media content production expenses, provided that the application is accompanied by a diversity plan, outlining:

i. The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent of the total hired for the qualified film or digital medial production;

ii. The efforts made, or to be made, in the recruitment, selection, appointment, promotion, training, and related employment areas to ensure equal employment opportunities for minority persons and women;

iii. The specific goals, which may include advertising and recruitment actions, for hiring minority persons and women, including full-time jobs for full-time or full-time equivalent

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employees in New Jersey for production staff and crew, entry level positions, management positions, and talent-related positions; and

iv. Whether the applicant intends to participate, or has participated, in training, education, and recruitment programs that are organized in cooperation with State colleges and universities, labor organizations, and the motion picture industry and are designed to promote and encourage the training and hiring of minority persons and women.

**2. The amount of the increase to a tax credit allowed pursuant to paragraph 1 above shall be 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 paragraph 1 above, outlines specific goals that include hiring no less than 5 percent of persons as performers in the film or digital media production who:**

**i. Are members of ethnic minority groups that are underrepresented in film or digital media productions in the United States compared to their representation in the population of the United States;**

**ii. If credited, have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording, and if uncredited, residents of any municipality in New Jersey in which filming occurs as part of the production for at least 12 months preceding the beginning of filming or recording at that location, or any surrounding municipality. For purposes of this subparagraph, a surrounding municipality shall be an adjacent municipality; and**

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

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

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

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

**2.** At initial approval, the Authority will designate the maximum amount of the tax credit and will assign a tax credit vintage year to the tax credit. **To assist the Authority in reviewing the application, the Authority may retain a third-party consultant, at the cost of the applicant, to review the budget submitted by the applicant to determine if the qualified film or digital media expenses are within reasonable industry standards.** The initial approval letter received by the taxpayer will include conditions subsequent to receipt of the tax credit including, but not limited to, the requirement for progress reports, [and] the date by when final documentation

pursuant to (b) below is required. **For projects submitted by studio partners and film-lease partners, the initial approval letter shall include a condition that the Authority's approval of the final documentation shall require the taxpayer remaining a studio partner or a film-lease partner.** Failure to submit timely, periodic reports that demonstrate satisfactory progress or final documentation may lead to the forfeiture of the tax credit.

(b) In general, the final documentation required by (c) below shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

(c) Upon completion of total film production expenses or the total digital media content production expenses, or the incurrence of qualified film production expenses during a privilege period or taxable year that exceed \$1,000,000 per production, the taxpayer shall submit the following final documentation, which the Authority, in consultation with the Director and the Commission, shall process and evaluate:

1. With respect to a film, evidence satisfactory to the Commission, and written confirmation from the Commission to the Authority that principal photography commenced within the earlier of 180 days from the date of **the** completed application **for the tax credit** [or 150 days from the date of initial approval by the Authority];

2. The Authority shall review and approve actual budgets and proof of total and qualified film production expenses or total and qualified digital media content production expenses, including a listing of the name of the company or person paid; his, her, or its Federal identification number; and a report prepared by [an] **a qualified** independent certified public accountant licensed in the State verifying the expenses claimed by the applicant. The report shall be prepared by [the] **a qualified** independent certified public accountant, **as described in (d) below**, pursuant to agreed-upon procedures prescribed by the Authority and the Director[; and].

**i. The report** shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to substantiate the total and qualified film production expenses or the total and qualified digital media content production expenses of the taxpayer, **including:**

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

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

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

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

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

**ii. In the report, 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 in each strata pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages in each strata. The determination shall be provided by the qualified independent certified public accountant in writing to the taxpayer, the Authority, and the Director, and the taxpayer shall include a copy of the written determination in the filing of a return that includes a claim for a tax credit allowed pursuant to this section;**

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

**3. For taxpayers that received initial approval for the production of a reality show, the following is additionally required:**

**i. The report required in (c)2 above, shall include verification of the actual capital investment in the production facility. If the capital investment in the report is less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production;**

**ii. The temporary certificate of occupancy;**

**iii. A detailed floorplan, indicating the uses of each area, of the production facility;**

**iv. The taxpayer shall submit the executed deed, lease, or sublease evidencing site control. If the taxpayer is a tenant and the lease or sublease has a term, including renewals and options, of less than the minimum eligibility requirement in the definition of film, the taxpayer shall no longer be eligible for tax credits for the production; and**

**v. Any other information necessary to determine compliance with the requirements of a reality show.**

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4. With respect to a film, evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31-21.3(a)3;

5. If the applicant was initially approved for a bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1 **or (l)2**, evidence of good faith efforts to undertake the diversity plan. The bonus amount shall not be included in the amount of the final approval if the applicant fails to submit satisfactory evidence to the Authority and the Division;

**6. A certification from the taxpayer that the information provided pursuant to this subsection (c) is true under the penalty of perjury; and**

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

**(d) The Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants, provided however, the taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for the purposes of the report in c(2) above, if the taxpayer demonstrates an extenuating circumstance prohibiting the taxpayer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the report or none of the qualified certified public accountants are independent to the taxpayer;**

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

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

[(f) An applicant may appeal the Authority's initial approval or denial under (a) above and final approval or denial under (c) above by submitting, in writing to the Authority, within 20 calendar days from the date of the Authority's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1. Appeals that are timely submitted shall be handled by the Authority as follows:

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

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

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

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

**(g) For completed film tax credit applications submitted by film-lease partners and studio partners, upon request, the Authority may provide a non-binding, administrative pre-certification approval letter contingent on Board approval.**

**19:31-21.8 Evaluation process for designation of studio partner or film-lease partner; initial approval; annual reports**

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

**(b) The completed application for designation as a studio partner shall be considered by the Authority for approval on a first in time basis. If interest in studio partner designation so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. No more than three studio partner applications shall be approved by the Board.**

**(c) The completed application for designation as a film-lease partner shall be considered by the Authority for approval on a first in time basis.**

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

**Commission, to review the plan submitted by the applicant to determine the feasibility of projected qualified film production expenses.**

**(e) Upon review of the application, the Board shall consider whether to designate the taxpayer as a studio partner or film-lease partner pursuant to N.J.A.C. 19:31-21.3(d) and (e) respectively. The designation shall expire at the end of the studio partner or film-lease partner's commitment period. Following approval by the Board, the Authority shall require the taxpayer to execute and return an approval letter to the Authority. The Board's designation shall be subject to conditions subsequent set forth in the approval letter. The conditions in the approval letter must be met to retain the designation.**

**1. The conditions of approval shall include, but not be limited to, submission of periodic progress reports; committed financing, if applicable; site plan approval, if applicable; evidence of final site control of the production facility; final floorplan indicating the uses of each area; and the temporary certificate of occupancy.**

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

**3. A studio partner shall submit the temporary certificate of occupancy within 36 months from the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.**

**4. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's designation shall expire if the conditions are not satisfied within the period of time prescribed in this subsection (e) or in the approval letter.**

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

**1. The commencement of the commitment period; and**

**2. An agreement that the studio partner shall maintain the lease or ownership for the duration of the commitment period, and shall not sublease any part of the production facility for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period or sell any part of the New Jersey production facility, provided that a studio partner may sell the production facility if it remains the tenant in the production facility. If the studio partner subleases any part of the production facility, the studio partner shall not receive any benefits from this program for any activity of the tenant and the tenant shall not receive any benefits from this program from the studio partner's designation.**

**(g) A studio partner shall certify, at time of submission of final documentation for a film pursuant to N.J.A.C. 19:31-21.7(c), that it continues to meet the criteria of a studio partner as set forth in N.J.A.C. 19:31-21.3(d). The Authority may request, at its sole discretion, any documentation supporting taxpayer's certification.**

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

**1. The commencement and length of the commitment period;**

**2. A requirement to submit the following annually within 120 days after the end of the film-lease partner's privilege period:**

**i. A report prepared by a qualified independent certified public accountant pursuant to N.J.A.C. 19:31-21.7(d) verifying the amount of qualified production expenses incurred by the taxpayer, under the film-lease partner designation, in each privilege period of the commitment period to date, including expenses incurred on projects in progress;**

**ii. A report from the taxpayer's chief financial officer or equivalent officer including the following:**

**(1) Information on all production projects, known or anticipated, for the remaining years of the commitment period including, but not limited to, production names, and estimated project dates;**

**(2) An estimate of all anticipated qualified film production expenses for the remaining years of the commitment period; and**

**(3) A certification indicating whether or not the film-lease partner is aware of any condition, event, or act, which would cause the film-lease partner not to be in compliance with the approval, the Act, or this subchapter.**

**3. A provision to reduce any tax credits pursuant to N.J.A.C. 19:31-21.9(c).**

**4. A provision indicating the film-lease partner cannot submit the final documentation for any project pursuant to N.J.A.C. 19:31-21.7(c), until the film-lease partner has attained at least the minimum annual average of qualified film production expense. Once the minimum average of qualified film production expense is met initially, all subsequent final documentation submission shall be subject to the reduction set forth in N.J.A.C. 19:31-21.9(b)**

**5. A provision indicating the film-lease partner shall maintain the lease or ownership for the duration of the commitment period, and shall not sublease any part of the production facility for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period or sell any part of the New Jersey production facility, provided that a film-lease partner may sell the production facility if it remains the tenant in**

**the production facility. If the film-lease partner subleases any part of the production facility, the film-lease partner shall not receive any benefits from this program for any activity of the tenant and the tenant shall not receive any benefits from this program from the film-lease partner's designation.**

**(i) Any film tax credit applications submitted by a film-lease partner, not under the film-lease partner designation, shall not be counted towards the annual average of qualified film production expense and shall not be included in the film-lease partner's annual report pursuant to (h)2i above.**

#### **19:31-21.9 Recapture and reduction of tax credits for studio partner or film-lease partner**

**(a) For a studio partner, if, at any time during the commitment period pursuant to section 65 of P.L. 2020, c. 156, the Authority determines the taxpayer no longer complies with the requirements pursuant to N.J.A.C. 19:31-21.8(f), or otherwise fails to meet the criteria of a studio partner, the Authority shall recapture the excess benefit provided to studio partners for purposes of certain qualified film production expenses, and all films for which an initial approval has been given, but for which the Authority has not approved final documentation, shall terminate.**

**(b) If at any time during the commitment period, a film-lease partner submits final documentation pursuant to N.J.A.C. 19:31-21.7(c) prior to attaining the minimum annual average of qualified film production expenses, the film lease partner shall not be eligible for tax credits under the film-lease designation.**

**(c) Once the film-lease partner attains at least the minimum annual average of qualified film production expenses, if at any time during the commitment period, a film-lease partner submits final documentation pursuant to N.J.A.C. 19:31-21.7(c) that results in a reduction of the annual average of qualified film production expenses to less than the minimum, the Authority shall reduce by 20 percent any tax credit award for a film for which final documentation pursuant to N.J.A.C. 19:31-21.7(c) has been submitted. This reduction shall continue until a privilege period when the annual average of qualified film production expenses based on all final documentation submitted has been restored to at least the minimum.**

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

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

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

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credits to be transferred, the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the taxpayer, naming the transferee. The certificate issued to the business shall include a statement waiving the taxpayer's right to claim that amount of the tax credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the tax credits pursuant to N.J.A.C. 19:31-21.6.

(b) The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the taxpayer of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the taxpayer shall submit to the Authority an executed form of standard selling agreement that evidences that the consideration received by the taxpayer is not less than 75 percent of the transferred tax credit.

(c) In the event that the taxpayer is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling agreement shall set forth the allocation among the partners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31-21.6.

(d) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.

**(e) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:**

- 1. The name of the transferrer;**
- 2. The name of the transferee;**
- 3. The value of the tax credit transfer certificate;**
- 4. The State tax against which the transferee may apply the tax credit; and**
- 5. The consideration received by the transferrer.**

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

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

- 1. To taxpayers, other than New Jersey studio partners and New Jersey film-lease partners, the [shall not exceed a] cumulative total shall not exceed [of] [\$75,000,000]**

**\$100,000,000** in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year [2024] **2035**, as indicated by the fiscal year in which the tax credit was initially approved, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to N.J.S.A. 54A:1-1 et seq.

**2. The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C.19:31-21.6(a), subsection a. of section 1 of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection a. of section 2 of P.L. 2018, c. 56 (N.J.S.A. 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 2034 to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 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 2025, in addition to the \$100,000,000 made available for New Jersey studio partners pursuant to this paragraph, up to an additional \$350,000,000 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, from the funds made available pursuant to subparagraph (i) of paragraph (1) of subsection b. of section 98 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-362).**

**3. The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a), subsection a. of section 1 of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection a. of section 2 of P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b) to New Jersey film-lease 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 2034 to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 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 2025, in addition to the \$100,000,000 made available for New Jersey film-lease partners pursuant to this paragraph, up to an additional \$100,000,000 may be made available annually, in the discretion of the Authority, to New Jersey film-lease partners for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, from the funds made available pursuant to subparagraph (i) of 1 paragraph (1) of subsection b. of section 98 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-362).**

**4. If the applicable cumulative total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(a) exceeds the amount of tax credits available in that fiscal year, then taxpayers who have first applied for and have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(a) are not in excess of the amount of applicable credits available.**

(b) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director pursuant to N.J.A.C. 19:31-21.6(b), **subsection b. of section 1 of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection b. of section 2 of P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b)** shall not exceed a cumulative total of [\$10,000,000] **\$30,000,000** in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year [2024] **2035**, as indicated by the tax credit vintage year, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to N.J.S.A. 54A:1-1 et seq. If the total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(b) exceeds the amount of tax credits available in that year, then taxpayers who have first applied for and who have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(b) are not in excess of the amount of credits available.

(c) **Notwithstanding any provision of subsection (a) above to the contrary, for any fiscal year in which the amount of tax credits approved to New Jersey studio partners, New Jersey film-lease partners, or taxpayers other than New Jersey studio partners and New Jersey film-lease partners pursuant to N.J.A.C. 19:31-21.6(a), subsection a. of section 1 of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection a. of section 2 of P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b) 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 partners, or taxpayers other than New Jersey studio partners and New Jersey film-lease partners 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 partners, or taxpayers other than New Jersey studio partners and New Jersey film-lease partners in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer. In each fiscal year in which tax credits remain unapproved for, or unredeemed or not transferred by, New Jersey film-lease partners or taxpayers other than New Jersey studio partners and New Jersey film-lease partners, the authority may reallocate some or all of such remaining tax credits in the subsequent fiscal year between the category of New Jersey film-lease partners and the category of taxpayers other than New Jersey studio partners and New Jersey film-lease partners in lieu of increasing the tax credits available for the respective category by the amount reallocated.**

(d) **Notwithstanding any provision of subsection (b) above to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to N.J.A.C. 19:31-21.6(b), subsection b. of section 1 of P.L. 2018, c. 56 (N.J.S.A. 54:10A-5.39b), and subsection b. of**

**section 2 of P.L. 2018, c. 56 (N.J.S.A. 54A:4-12b) 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.**

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

**(a) The Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, shall apply to construction contracts at the production facility undertaken in connection with or as a condition of tax credits received under the program. Nothing in this subsection shall be construed as requiring affirmative action or the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first tax credits to the taxpayer.**

**(b) In addition to the requirements in (a), the [The] Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, shall [will] apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program.**

19:31-21.13 Appeals

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

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

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

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

**NOTE: THIS IS A COURTESY COPY OF A DRAFT RULE.** Please be aware that NJEDA offers this opportunity to provide input in addition to, but not as part of, the NJEDA's formal process for rules adoption. The formal process will follow the requirements in the New Jersey Economic Recovery Act of 2020 and the Administrative Procedures Act.

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

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

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

19:31-21.[11]14 Severability

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