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RULE ADOPTIONS

Reporter

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NJ - New Jersey Register > 2020 > JANUARY > JANUARY 6, 2020 > RULE ADOPTIONS > OTHER AGENCIES -- NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Readoption of Specially Adopted New Rules with Amendments: N.J.A.C. 19:31-21

Adopted Amendment: N.J.A.C. 19:31-21.5

Text

Authority Assistance Programs

Garden State Film and Digital Media Jobs Program

Proposed: August 5, 2019, at 51 N.J.R. 1256(a).

Adopted: November 14, 2019, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: December 4, 2019, as R.2020 d.007, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2018, c. 56.

Effective Dates: December 4, 2019, Readoption;

January 6, 2020, Amendments.

Expiration Date: May 8, 2025.

Take notice that the New Jersey Economic Development Authority ("EDA" or "Authority") proposed the readoption of specially adopted new rules implementing the Garden State Film and Digital Media Jobs Program (Program) at N.J.A.C. 19:31-21 on August 5, 2019, at 51 N.J.R. 1256(a), which in accordance with P.L. 2018, c. 56, were scheduled to expire on June 28, 2019. Pursuant to N.J.S.A. 52:14B-5.1.c, the expiration date was extended 180 days to December 25, 2019.

Summary of Public Comments and Agency Responses:

The contents of the single comment received, from Angela H. Miele, Vice President, State Government Affairs and State Tax Policy, Motion Picture Association, Inc., and the Authority's responses are summarized below.

COMMENT: The regulations should be more specific in referencing that the year of the "initial approval" of the tax credits is what determines the vintage year of the credits. Accordingly, the definition of "tax credit vintage year" should be revised to provide (additions in bold; deletions in brackets): "tax credit vintage year" means the applicant's privilege period or taxable year in which the Authority [approved] **issued initial approval of the application and the privilege period or taxable year in which** the tax credit may be applied." That change will properly reflect the determination of the "vintage tax year" in proposed N.J.A.C. 19:31-21.7.

RESPONSE: The Authority concurs with the comment and, in part, with the suggested revisions. The definition of "tax credit vintage year" is changed to clarify that the approval referenced in the definition is the initial approval.

COMMENT: The term "compensation" in the definition of "highly compensated individual" is not defined and it is unclear if the term includes just the individual's salary or the individual's salary and fringe benefits. Therefore, the following sentence should be added to the end of the definition to ensure certainty regarding the term compensation: "For purposes of this definition, compensation for the performance of services does not include any fringe benefits."

RESPONSE: The Authority does not concur with the suggested revision. The definition of "qualified film production expenses" includes the phrase "wages or salaries or other compensation" in relation to payments to "a highly compensated individual" that must be excluded; therefore, compensation other than "wages or salaries," including, but not limited to, fringe benefits are part of "compensation."

COMMENT: The definition of "independent contractor" should be more specific in its reference to Federal and State taxes, which will clarify its application, therefore, the term "income" should be added following "Federal and State" and before "tax purposes."

RESPONSE: The Authority does not concur with the suggested revision, as the definition of "independent contractor" is the same as the statutory definition contained in the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, N.J.S.A. 54:10A-5.39b et seq.

COMMENT: The definition of "qualified film production expense" should be amended as follows (additions in bold; deletions in brackets): "the costs for **services performed and** tangible personal property used **or consumed** [and services performed]" to conform to the definition of "total film production expenses." Also, the term "incurred in New Jersey" as used throughout the proposed regulations should be defined as follows: "Incurred in New Jersey" means a 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. 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.

RESPONSE: The Authority does not concur with the suggested revision. Expanding the use of the term "incurred in New Jersey" to consumption or use of personal property that may be temporarily in New Jersey is unrelated to benefits the State may derive from the property. Moreover, determining, and providing supporting documentation to evidence, the amount of the total expenditure for the personal property to attribute to the temporary use in New Jersey would be administratively difficult.

COMMENT: The references 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" in the definitions of "qualified digital media content production expenses" and "qualified film production expenses" should be clarified to avoid confusion. Accordingly, the following revisions are recommended (additions in bold; deletions in brackets): "wages and salaries of individuals employed in the production of a film [on which] **that are subject to** the tax imposed by N.J.S.A. 54A:1-1 et seq., [has been paid or is due]." The changes would avoid any suggestion that withholding tax "paid" on behalf of a Pennsylvania resident would unintentionally result in the underlying wages and salary being a qualified expense. Those wages and salary would not qualify under a "subject to tax" test because New Jersey gross income tax withheld would ultimately be refunded to the employee because they are not subject to tax under the Reciprocal Personal Income Tax Agreement between Pennsylvania and New Jersey.

RESPONSE: The Authority does not concur with the suggested revision as the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, N.J.S.A. 54:10A-5.39b et seq., does not include residents of a state that has a Reciprocal Personal Income Tax Agreement with New Jersey. Therefore, the change is not necessary.

COMMENT: The definition of "selling business" should refer to "available" tax credits rather than an "unused" tax credits to avoid any suggestion that the taxpayer is only permitted to sell its tax credit after it has applied the credit against its tax liability for the vintage year. Such a requirement does not appear to be intended and is not contained in the tax credit statute.

RESPONSE: The Authority does not concur that the term "unused" requires the taxpayer to first apply the tax credit against its tax liability for the vintage year, prior to selling the tax credit.

COMMENT: At proposed N.J.A.C. 19:31-21.3(a)4 and (b)1iii, the term "tax credit verification report" should be changed to "tax credit agreed upon procedures report," insomuch as the term "verification" report is not used in the statute or elsewhere in the proposed regulations.

RESPONSE: The Authority does not concur with the suggested revision as the term "tax credit verification report" is a statutory term contained in subparagraphs (d) and (c), paragraphs (1) and (2), subsections a. and b. of sections 1. and 2. of the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, N.J.S.A. 54:10A-5.39b et seq.

COMMENT: At proposed N.J.A.C. 19:31-21.4(b)1, the language is inconsistent with proposed N.J.A.C. 19:31-21.3(b)1i. Accordingly, language should be added to provide that (additions in bold): "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.**" That change will properly reflect the eligibility criteria of the Digital Media Jobs Program at proposed N.J.A.C. 19:31-21.3(b)1i.

RESPONSE: The Authority concurs and will add the suggested revision at N.J.A.C. 19:31-21.4(b)1.

COMMENT: In the proposed diversity plan, we look forward to working with the EDA to ensure the requirements at N.J.A.C. 19:31-21.6(l)1i through iv will be clarified, provide more specific guidelines, and recognize current diversity programs undertaken by members of the motion picture industry.

RESPONSE: The Authority appreciates the expressed intent of the Motion Picture Association Inc., to work with the EDA to better implement the proposed diversity plan requirements at N.J.A.C. 19:31-21.6(l)1i through iv. The Authority has determined to initiate changes to help clarify certain diversity plan requirements, which are summarized in detail in paragraph 2 of the Summary of Agency-Initiated Changes below.

Summary of Agency-Initiated Changes Upon Adoption:

1. N.J.A.C. 19:31-21.3(a)2 and 21.7(c)1 is changed to clarify the timeframe for commencement of principal photography, that is, that the time period commencing from an application refers to a "completed" application. The term "original" was ambiguous and could have been misinterpreted as a filed incomplete application.

2. N.J.A.C. 19:31-21.6(l)1ii and iv is changed to clarify that the information to be submitted with an application accompanied by a diversity plan may include both prior and prospective efforts, with regard to the film to promote and encourage the training and hiring of minority persons and women. In addition, N.J.A.C. 19:31-21.6(l)1ii is changed to make the subparagraph clearer by changing the location of the phrase "in the recruitment, selection, appointment, promotion, training, and related employment areas." Finally, at N.J.A.C. 19:31-21.6(l)1iv, the phrase "who represent the diversity of the State population" is deleted because it's not necessary as the rule already refers to "minority persons and women."

3. N.J.A.C. 19:31-21.7(a) is changed to delete the phrase "which will be the fiscal year in which the application receives initial approval" as it pertains to the designation by the Authority of the tax credit vintage year, and is unnecessary.

4. At N.J.A.C. 19:31-21.7(c)1, the Authority is adding "the earlier of" pertaining to the written confirmation needed by the New Jersey Motion Picture and Television Development Commission and the Authority for when the principal photography commenced. This change makes the paragraph mirror N.J.A.C. 19:31-21.3(a), which states the taxpayer eligibility criteria; specifically stating when the principal photography of the film must commence by, which is what is reported on at N.J.A.C. 19:31-21.7(c)1.

5. N.J.A.C. 19:31-21.9(a) is changed to delete and replace the terms "tax credit vintage year" with "fiscal year in which the tax credit was initially approved" pertaining to the value of tax credits approved in each fiscal year prior to 2024.

Federal Standards Statement

A Federal standards analysis is not required because the readopted specially adopted new rules with an amendment are not subject to any Federal requirements or standards.

Full text of readopted specially adopted new rules with an amendment follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[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.

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:

"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.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form, but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" does not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.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 invests, after July 1, 2018, 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 investment of the production company may include the investment of its landlord after July 1, 2018. To determine the 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.

"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 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.

"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 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 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(l)2 and 3, 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.

"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 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 "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 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 "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 a "qualified film production expenses" 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 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.

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

"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 ***[approved]*** ***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.

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

"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 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 exceed \$ 1,000,000 per production;

2. The principal photography of the film commences within the earlier of 180 days from the date of the ***[original]*** ***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 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 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.

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, in New Jersey;

4. A breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(h)2 or 3, for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County;

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. 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. 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

11. 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.

(b) 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***;

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.

19:31-21.5 Fees

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

1. For projects with total tax credits of \$ 1,000,000 or less, the fee to be charged at application shall be \$ 500.00; and

2. For projects with total tax credits in excess of \$ 1,000,000, the fee to be charged at application shall be \$ 2,500.

(b) A non-refundable fee of 0.5 percent of the approved tax credit amount shall be paid prior to the receipt of the tax credit.

(c) A non-refundable fee of \$ 1,000 shall be paid to the Authority upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-21.8.

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

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

(a) A taxpayer, 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), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., in an amount equal to 30 percent of the qualified

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.

(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), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., in an amount equal to 20 percent of the qualified digital media content production expenses of the taxpayer, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023.

(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, 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) 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, 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 *[in the recruitment, selection, appointment, promotion, training, and related employment areas]*;

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

iv. *[The participation]* ***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 *[who represent the diversity of the State population]*.

2. The tax credit allowed pursuant to (a) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

3. The tax credit allowed pursuant to (b) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 25 percent of the qualified digital media content production expenses of the 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.

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

(a) Applications shall be submitted to the Commission, which, upon review for eligibility, will forward the application to the Authority with the Commission's recommendation. The application shall be considered by the Authority for initial approval on a first in time basis, subject to 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. 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*[, which will be the fiscal year in which the application receives initial approval]*. 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. 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 *[original]* ***completed*** application 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 independent certified public accountant licensed in the State verifying the expenses claimed by the applicant. The report shall be prepared by the independent certified public accountant pursuant to agreed-upon procedures prescribed by the Authority and the Director; and shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to substantiate the total and qualified film production expenses or the total and qualified digital media content production expenses of the taxpayer. The amount of the qualified film production expenses or qualified digital media content production expenses in the certification shall not be increased regardless of additional expenses after the date of the certification;

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

4. 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, 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; and

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

(d) The Authority, in consultation with the Division and Commission, shall determine final approval of the tax credit in an amount based on the Authority's determination of the total and qualified film production expenses or total and qualified digital media content production expenses reported in the independent certified public accountant's certification, 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) 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(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:

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.

19:31-21.8 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(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 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.

19:31-21.9 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 not exceed a cumulative total of \$ 75,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024, as indicated by the *[tax credit vintage year]* ***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. If the 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 credits available.

(b) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director pursuant to N.J.A.C. 19:31-21.6(b) shall not exceed a cumulative total of \$ 10,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024, 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.

19:31-21.10 Affirmative action; and prevailing wage

The Authority's affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, will apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program.

19:31-21.11 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.

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