The New Jersey Economic Recovery Act of 2020: An Overview of the New Jersey Film & Digital Media Tax Credit Program

Client Alert

4.27.21

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The New Jersey Economic Recovery Act of 2020 (ERA), a seven-year, $14 billion package of incentive programs intended to encourage New Jersey job growth, property development and redevelopment, community partnerships, and numerous other economic development initiatives, was signed into law by Governor Phil Murphy on January 7, 2021.

This Client Alert focuses on the New Jersey Film & Digital Media Tax Credit Program, enabled by the Garden State Film and Digital Media Jobs Act as amended by the ERA.

Film Tax Credit Program

The Film Tax Credit Program provides for franchise and gross income tax credits to taxpayers (filmmakers) in an amount equal to 30% of the qualified film production expenses (or 35% if incurred in southern New Jersey) incurred between July 1, 2018 and July 1, 2028 (known as the "privilege period") provided that:

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

(b) principal photography of the film commences within the earlier of 180 days from the date of the original application for the tax credit, or 150 days from the date of approval of the application for the tax credit;

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

(d) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in New Jersey; and

(e) the taxpayer complies with certain withholding requirements provided for payments to loan out companies and independent contractors.

The term "film" is defined to include television series and television shows of 22 minutes or more in length intended for a national or regional audience. The definition of "film" does not include news, current events, weather, market reports or public programming, talk show, sports events, programs that solicit funds, production containing obscene material, certain types of reality shows, or production intended for private, industrial, corporate or institutional purposes.

The Garden State Film and Digital Media Jobs Act appropriates an annual cumulative total of $100 million in film tax credits that may be awarded through fiscal year 2029. The ERA amendments to the legislation, however, adds two new categories of potential beneficiaries with separate appropriations:

- First, the ERA defines “New Jersey film partners” as 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 as a “transformative project” under the Aspire Program.” No more than five film production companies may be designated as a New Jersey film partner. A separate annual appropriation of $100 million in tax credits through fiscal year 2029 is now available for New Jersey film partners.
- Second, the ERA defines “New Jersey film-lease partners” as a taxpayer “that has made a commitment to lease or acquire a New Jersey production facility with an aggregate square footage of at least 50,000 square feet, which includes a sound stage and production support space such as production offices or a backlot, 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, an annual average of $50,000,000 of qualified film production expenses over the period of at least five but not to exceed 10 years.” A separate annual appropriation of $100 million in tax credits through fiscal year 2034 is now available for New Jersey film-lease partners.

The ERA also modifies what can and cannot be considered "qualified film production expenses" for film partners and film-lease partners.

Digital Media Tax Credit Program

The Digital Media Tax Credit Program provides for tax credits to taxpayers (digital media producers) in an amount equal to 20% of the qualified digital media content production expenses (or 25% if incurred in southern New Jersey) incurred between July 1, 2018 and July 1, 2028 (known as the "privilege period") provided that:

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

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

(c) the taxpayer submits a tax credit verification report prepared by an independent certified public accountant licensed in New Jersey; and

(d) the taxpayer complies with certain withholding requirements provided for payments to loan out companies and independent contractors.

The Garden State Film and Digital Media Jobs Act appropriates an annual cumulative total of $10 million in digital media content tax credits that may be awarded under the program through fiscal year 2029.

The term "digital media content" is defined to include 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. The definition of "digital media content" does not include content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.2C:34-2 and N.J.S.2C:34-3; websites or content that are produced or maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the taxpayer for distribution or incorporation into the taxpayer's digital media content.

The New Jersey Economic Development Authority (EDA) will be promulgating rules related to the implementation of the New Jersey Film & Digital Media Tax Credit Program. We will keep you updated on this and other developments related to programs enacted under the New Jersey Economic Recovery Act of 2020.

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