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Senate Bill 1173 (as enacted)  
Sponsor: Senator Hansen Clarke  
Senate Committee: Commerce and Tourism  
House Committee: Commerce

**PUBLIC ACT 86 of 2008**

Date Completed: 4-24-08

**CONTENT**

The bill amended the Michigan Business Tax (MBT) Act to allow an MBT credit for a taxpayer who invests at least \$100,000 before 2009, or \$250,000 after 2008, in a qualified film and digital media infrastructure project. The bill does all of the following:

- Allows the Michigan Film Office, with the State Treasurer's concurrence, until September 30, 2015, to enter into a tax credit agreement with a taxpayer.
- Allows a taxpayer to claim a credit of 25% of its base investment.
- Limits the total amount of credits authorized in a year to \$20.0 million.
- Requires a taxpayer seeking a credit to apply to the Michigan Film Office and pay an application fee.
- Requires an agreement between the Office and a taxpayer to contain certain provisions, including a requirement that construction on the project begin within 180 days of the date of the agreement, and a provision that a taxpayer may not claim the credit until at least 25% of the base investment has been spent.
- If a taxpayer has complied with the terms of an agreement, requires the Office to issue an investment expenditure certificate, which the taxpayer must submit to the Department of Treasury in order to claim a credit.
- Requires a credit to be reduced by 0.5% for a credit application and redemption fee.
- Provides that a taxpayer is liable for a civil penalty equal to the credit if

**the taxpayer willfully and knowingly submits false or fraudulent information.**

- **Requires fee revenue and penalties to be deposited in the Michigan Film Promotion Fund.**

The bill took effect on April 8, 2008.

Credit Criteria

Until September 30, 2015, the Michigan Film Office, with the concurrence of the State Treasurer, may enter into an agreement with a taxpayer providing the taxpayer with an MBT credit for an investment in a qualified film and digital media infrastructure project. To qualify for the credit, the taxpayer must meet all of the following requirements:

- Invest and spend at least \$100,000 before January 1, 2009, or at least \$250,000 after December 31, 2008, for a qualified film and digital media infrastructure project in this State.
- Enter into an agreement with the Film Office.
- Receive an investment expenditure certificate from the Office.
- Submit the certificate to the Department of Treasury.

In addition, the taxpayer must not be delinquent in a tax or other obligation owed to this State or be owned by or under common control of an entity that is delinquent in a tax or other obligation owed to the State.

The bill defines "qualified film and digital media infrastructure project" as a film, video, television, or digital media production and postproduction facility located in this State, movable and immovable property and equipment related to the facility, and any other facility that supports and is a necessary component of the primary facility. The term does not include a movie theater or other commercial exhibition facility, a facility used to produce obscene matter or an obscene performance, or a facility used for a production for which records must be maintained with respect to any performer under 18 USC 2257 (which concerns sexually explicit visual depictions).

#### Credit Amount; Total Credits

For investment expenditures made by a taxpayer for all qualified film and digital media infrastructure projects in this State, an agreement may provide for the taxpayer to claim a tax credit equal to 25% of the taxpayer's base investment. The credit must be reduced by any credit claimed for the same base investment under Section 437 of the Act (which allows an MBT credit for qualified taxpayers who have a preapproval letter from the Michigan Economic Growth Authority for certain brownfield projects).

The amount of the credit must be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed. The fee must be deducted from the credit otherwise payable to the taxpayer claiming it, and be deposited in the Michigan Film Promotion Fund (which Public Act 75 of 2008 creates).

Not more than \$20.0 million in total credits under the bill may be authorized in a tax year.

The bill defines "base investment" as the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for Federal income tax purposes, provided that the assets are physically located in Michigan for use in a business activity in this State and are not mobile tangible assets used by a person in the development of a qualified film and digital media infrastructure project. "Base investment" does not include a direct

production expenditure or qualified personnel expenditure eligible for a credit under Section 455 of the MBT Act. (Public Act 77 of 2008 added that section to allow an MBT or income tax credit for an eligible production company's direct production expenditures or qualified personnel expenditures.)

#### Facility

If all or part of a qualified film and digital media infrastructure project is a facility that may be used for purposes unrelated to production or postproduction activities, the project is eligible for the credit only if the Department determines that the facility will support and be necessary to secure production or postproduction activity for the production and postproduction facility, and the taxpayer agrees to both of the following:

- The facility will be used as a state-of-the-art production or postproduction facility or as support and component of the facility for its useful life.
- A credit will not be claimed under the bill until the facility is complete.

#### Application & Agreement

A taxpayer seeking a credit under the bill must submit to the Film Office an application to enter into an agreement. The application must be accompanied by a \$100 application fee and all of the information and records requested by the Office. The fee must be deposited in the Michigan Film Promotion Fund. The Office may not process the application until it is complete.

If the Office, with the State Treasurer's concurrence, determines to enter into an agreement, it must require that construction on the qualified film and digital media infrastructure project commence within 180 days of the date of the agreement, or the agreement will expire. The Office may extend the period for commencement for an additional 90 days, however, upon the taxpayer's request based on good cause.

The agreement also must provide for all of the following:

- A unique number assigned to the project.
- A detailed description of the project.
- A detailed business plan and market analysis for the project.

- A projected budget for the project.
- The project's estimated start date and completion date.
- A requirement that the taxpayer not file a claim for the credit until at least 25% of the base investment in the project has been spent.
- A requirement that the taxpayer give the Office the information and independent certification the Office and the Department consider necessary to verify investment expenditures and eligibility for the credit.

In addition, the agreement must provide that if the cost of tangible assets is paid or accrued in a tax year beginning after December 31, 2007, the taxpayer must repay "an amount equal to 25% of the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year..., and plus the loss, multiplied by the apportionment factor for the taxable year...from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base".

In determining whether to enter into an agreement, the Film Office and the State Treasurer must consider all of the following:

- The potential that, absent the credit, the qualified film and digital media infrastructure project will be constructed in a location other than Michigan.
- The extent to which the project may have the effect of promoting economic development or job creation in Michigan.
- The extent to which the credit will attract private investment for the production of motion pictures, videos, television programs, and digital media in the State.
- The extent to which the credit will encourage the development of film, video, television, and digital media production and postproduction facilities in the State.

#### Investment Expenditure Certificate

If the Film Office determines that a taxpayer has complied with the terms of an agreement entered into under the bill, the Office must issue an investment expenditure certificate to the taxpayer. The taxpayer

must submit a request to the Office for a certificate, along with any information or independent certification the Office or the Department considers necessary.

The Office must process each request within 60 days after it is submitted. The Office may request additional information or independent certification before issuing a certificate, however, and need not issue a certificate until it is satisfied that investment expenditures and eligibility are adequately established. The additional information requested may include a report of expenditures audited and certified by an independent certified public accountant.

Each investment expenditure certificate must be signed by the Michigan Film Commissioner and include the following:

- The taxpayer's name.
- A description of the qualified film and digital media infrastructure project.
- The taxpayer's eligible investment expenditures for the project.
- The unique number assigned to the project by the Office.
- The taxpayer's Federal employer ID number or Michigan Treasury number.
- Any independent certification required by the Office or the Department.

#### Claiming the Credit

To claim a credit under the bill, a taxpayer must submit an investment expenditure certificate to the Department. If the credit exceeds the amount of taxes owed by the taxpayer under the Act for a tax year, the excess may not be refunded but may be carried forward to offset MBT liability for up to 10 subsequent tax years or until it is used up, whichever occurs first.

The credit must be claimed after all other credits under the Act.

A taxpayer eligible to claim a credit may assign all or part of the credit to any assignee, who may subsequently assign all or part of a credit to one or more assignees. A taxpayer may claim a portion of the credit and assign the remainder. An assignment is irrevocable.

A credit assignment must be made on a form prescribed by the Department. A taxpayer claiming a credit must send a copy

of the completed assignment form to the Department in the tax year in which the assignment is made and attach a copy of the form to the return on which the credit is claimed.

#### Confidentiality

Information, records, and other data received, prepared, used, or retained by the Michigan Film Office that are submitted by an eligible production company and considered by the taxpayer and acknowledged by the Film Office as confidential, are not subject to the disclosure requirements of the Freedom of Information Act. Information, records, or other data are considered confidential only to the extent that the information or records describe the commercial and financial operations or intellectual property of the company, the information or records have not been publicly disseminated at any time, and disclosure may put the company at a competitive disadvantage.

#### Penalty

If a taxpayer willfully submits information under the bill that the taxpayer knows is fraudulent or false, the taxpayer is liable for a civil penalty equal to the amount of the credit, in addition to any other penalties provided by law. The penalty must be deposited in the Michigan Film Promotion Fund.

MCL 208.1457

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill will decrease State General Fund revenue by an unknown amount, depending on the investments affected and the number of agreements the State enters into. However, a maximum of \$20.0 million in credits may be awarded to taxpayers in a given year. Credits under the bill will be nonrefundable, but may be carried forward for up to 10 years or transferred. If transferred, it is unlikely the bill ever will reduce revenue by more than \$20.0 million in any year. To the extent that credits are carried forward, however, the carry-forward provision could result in more than \$20.0 million in credits being claimed in any given tax year.

While not tie-barred to other bills affecting similar taxpayers, the bill does not exclude certain expenditures eligible for credits under the other bills but precludes expenditures from also being used against brownfield credits under the Michigan Business Tax Act. Generally, it is assumed that taxpayers will pursue the combination of credits and expenditures that minimizes their total tax liability. The circumstances affecting that combination are likely to vary from taxpayer to taxpayer. The bill does not prevent expenditures related to the bill from also being eligible for credits under the other bills or elsewhere under the Michigan Business Tax Act, such as the investment tax credit. As a result, business activity generating a credit under the bill also may generate credit activity under the related bills or other provisions of existing law.

According to data from the Michigan Film Office, eight movies have been filmed in Michigan in the last two years. If all eight films had applied for the credit created by the bill in the same year, the bill would have increased revenue by \$800. The State also would have received 0.5% of credits claimed as a "credit redemption fee". Revenue from both the credit and the credit redemption fee will be deposited in the Michigan Film Promotion Fund.

Compensation costs often average approximately 50% of a film's production costs, but the share of total costs that reflect investment in tangible assets is unknown. A firm that has \$1.0 million of eligible expenditures on a qualified project will receive a credit of \$250,000.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.