

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1173

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
(MCL 208.1101 to 208.1601) by adding section 457.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 457. (1) UNTIL SEPTEMBER 30, 2015, THE MICHIGAN FILM
2 OFFICE, WITH THE CONCURRENCE OF THE STATE TREASURER, MAY ENTER INTO
3 AN AGREEMENT WITH A TAXPAYER PROVIDING THE TAXPAYER WITH A CREDIT
4 AGAINST THE TAX IMPOSED BY THIS ACT FOR AN INVESTMENT IN A
5 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT, AS
6 PROVIDED UNDER THIS SECTION. TO QUALIFY FOR THE CREDIT UNDER THIS
7 SECTION, A TAXPAYER SHALL MEET ALL OF THE FOLLOWING REQUIREMENTS:
8 (A) BEFORE JANUARY 1, 2009, INVEST AND EXPEND AT LEAST
9 \$100,000.00 FOR A QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE
10 PROJECT IN THIS STATE; AFTER DECEMBER 31, 2008, INVEST AND EXPEND

1 AT LEAST \$250,000.00 FOR A QUALIFIED FILM AND DIGITAL MEDIA
2 INFRASTRUCTURE PROJECT IN THIS STATE.

3 (B) ENTER INTO AN AGREEMENT AS PROVIDED IN THIS SECTION.

4 (C) RECEIVE AN INVESTMENT EXPENDITURE CERTIFICATE FROM THE
5 OFFICE UNDER SUBSECTION (5).

6 (D) SUBMIT THE INVESTMENT EXPENDITURE CERTIFICATE ISSUED BY
7 THE OFFICE UNDER SUBSECTION (5) TO THE DEPARTMENT UNDER SUBSECTION
8 (7).

9 (E) SHALL NOT BE DELINQUENT IN A TAX OR OTHER OBLIGATION OWED
10 TO THIS STATE OR BE OWNED OR UNDER COMMON CONTROL OF AN ENTITY THAT
11 IS DELINQUENT IN A TAX OR OTHER OBLIGATION OWED TO THIS STATE.

12 (2) FOR INVESTMENT EXPENDITURES MADE BY A TAXPAYER FOR ALL
13 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECTS IN THIS
14 STATE, AN AGREEMENT UNDER THIS SECTION MAY PROVIDE FOR THE TAXPAYER
15 TO CLAIM A TAX CREDIT EQUAL TO 25% OF THE TAXPAYER'S BASE
16 INVESTMENT. THE CREDIT UNDER THIS SECTION SHALL BE REDUCED BY ANY
17 CREDIT CLAIMED BY THE TAXPAYER UNDER SECTION 437 FOR THE SAME BASE
18 INVESTMENT. NO MORE THAN \$20,000,000.00 IN TOTAL CREDITS UNDER THIS
19 SECTION SHALL BE AUTHORIZED IN A TAX YEAR. IF ALL OR A PORTION OF A
20 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT IS A
21 FACILITY THAT MAY BE USED FOR PURPOSES UNRELATED TO PRODUCTION OR
22 POSTPRODUCTION ACTIVITIES, THEN THE PROJECT IS ELIGIBLE FOR THE
23 CREDIT ONLY IF THE DEPARTMENT DETERMINES THAT THE FACILITY WILL
24 SUPPORT AND BE NECESSARY TO SECURE PRODUCTION OR POSTPRODUCTION
25 ACTIVITY FOR THE PRODUCTION AND POSTPRODUCTION FACILITY AND THE
26 TAXPAYER AGREES TO BOTH OF THE FOLLOWING:

27 (A) THE FACILITY WILL BE USED AS A STATE OF THE ART PRODUCTION

1 OR POSTPRODUCTION FACILITY OR AS SUPPORT AND COMPONENT OF THE
2 FACILITY FOR THE USEFUL LIFE OF THE FACILITY.

3 (B) A CREDIT WILL NOT BE CLAIMED UNDER THIS SECTION UNTIL THE
4 FACILITY IS COMPLETE.

5 (3) A TAXPAYER SEEKING A CREDIT UNDER THIS SECTION MAY SUBMIT
6 AN APPLICATION TO ENTER INTO AN AGREEMENT UNDER THIS SECTION TO THE
7 MICHIGAN FILM OFFICE. THE APPLICATION SHALL BE SUBMITTED IN A FORM
8 PRESCRIBED BY THE MICHIGAN FILM OFFICE AND SHALL BE ACCOMPANIED BY
9 A \$100.00 APPLICATION FEE AND ALL OF THE INFORMATION AND RECORDS
10 REQUESTED BY THE OFFICE. AN APPLICATION FEE RECEIVED BY THE OFFICE
11 UNDER THIS SUBSECTION SHALL BE DEPOSITED IN THE MICHIGAN FILM
12 PROMOTION FUND. THE OFFICE SHALL NOT PROCESS THE APPLICATION UNTIL
13 IT IS COMPLETE. IF THE OFFICE, WITH THE CONCURRENCE OF THE STATE
14 TREASURER, DETERMINES TO ENTER INTO AN AGREEMENT UNDER THIS
15 SECTION, THE AGREEMENT SHALL PROVIDE FOR ALL OF THE FOLLOWING:

16 (A) A REQUIREMENT THAT CONSTRUCTION ON THE QUALIFIED FILM AND
17 DIGITAL MEDIA INFRASTRUCTURE PROJECT COMMENCE WITHIN 180 DAYS OF
18 THE DATE OF THE AGREEMENT OR ELSE THE AGREEMENT SHALL EXPIRE.
19 HOWEVER, UPON REQUEST SUBMITTED BY THE TAXPAYER BASED ON GOOD
20 CAUSE, THE OFFICE MAY EXTEND THE PERIOD FOR COMMENCEMENT OF WORK
21 FOR UP TO AN ADDITIONAL 90 DAYS.

22 (B) A UNIQUE NUMBER ASSIGNED TO THE QUALIFIED FILM AND DIGITAL
23 MEDIA INFRASTRUCTURE PROJECT.

24 (C) A DETAILED DESCRIPTION OF THE QUALIFIED FILM AND DIGITAL
25 MEDIA INFRASTRUCTURE PROJECT.

26 (D) A DETAILED BUSINESS PLAN AND MARKET ANALYSIS FOR THE
27 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT.

1 (E) A PROJECTED BUDGET FOR THE QUALIFIED FILM AND DIGITAL
2 MEDIA INFRASTRUCTURE PROJECT.

3 (F) ESTIMATED START DATE AND COMPLETION DATE FOR THE QUALIFIED
4 FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT.

5 (G) A REQUIREMENT THAT THE TAXPAYER NOT FILE A CLAIM FOR THE
6 CREDIT UNDER THIS SECTION UNTIL AT LEAST 25% OF THE BASE INVESTMENT
7 IN THE QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT
8 IDENTIFIED IN THE AGREEMENT HAS BEEN EXPENDED.

9 (H) A REQUIREMENT THAT THE TAXPAYER PROVIDE THE OFFICE WITH
10 THE INFORMATION AND INDEPENDENT CERTIFICATION THE OFFICE AND THE
11 DEPARTMENT DEEM NECESSARY TO VERIFY INVESTMENT EXPENDITURES AND
12 ELIGIBILITY FOR THE CREDIT UNDER THIS SECTION.

13 (I) A REQUIREMENT THAT IF THE COST OF TANGIBLE ASSETS
14 DESCRIBED IN SUBSECTION (11) (A) WAS PAID OR ACCRUED IN A TAX YEAR
15 BEGINNING AFTER DECEMBER 31, 2007, THE TAXPAYER SHALL REPAY AN
16 AMOUNT EQUAL TO 25% OF THE GROSS PROCEEDS OR BENEFIT DERIVED FROM
17 THE SALE OR OTHER DISPOSITION OF THE TANGIBLE ASSETS MINUS THE
18 GAIN, MULTIPLIED BY THE APPORTIONMENT FACTOR FOR THE TAXABLE YEAR
19 AS PRESCRIBED IN CHAPTER 3, AND PLUS THE LOSS, MULTIPLIED BY THE
20 APPORTIONMENT FACTOR FOR THE TAXABLE YEAR AS PRESCRIBED IN CHAPTER
21 3 FROM THE SALE OR OTHER DISPOSITION REFLECTED IN FEDERAL TAXABLE
22 INCOME AND MINUS THE GAIN FROM THE SALE OR OTHER DISPOSITION ADDED
23 TO THE BUSINESS INCOME TAX BASE IN SECTION 201.

24 (4) IN DETERMINING WHETHER TO ENTER INTO AN AGREEMENT UNDER
25 THIS SECTION, THE MICHIGAN FILM OFFICE AND THE STATE TREASURER
26 SHALL CONSIDER ALL OF THE FOLLOWING:

27 (A) THE POTENTIAL THAT IN THE ABSENCE OF THE CREDIT THE

1 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT WILL BE
2 CONSTRUCTED IN A LOCATION OTHER THAN THIS STATE.

3 (B) THE EXTENT TO WHICH THE QUALIFIED FILM AND DIGITAL MEDIA
4 INFRASTRUCTURE PROJECT MAY HAVE THE EFFECT OF PROMOTING ECONOMIC
5 DEVELOPMENT OR JOB CREATION IN THIS STATE.

6 (C) THE EXTENT TO WHICH THE CREDIT WILL ATTRACT PRIVATE
7 INVESTMENT FOR THE PRODUCTION OF MOTION PICTURES, VIDEOS,
8 TELEVISION PROGRAMS, AND DIGITAL MEDIA IN THIS STATE.

9 (D) THE EXTENT TO WHICH THE CREDIT WILL ENCOURAGE THE
10 DEVELOPMENT OF FILM, VIDEO, TELEVISION, AND DIGITAL MEDIA
11 PRODUCTION AND POSTPRODUCTION FACILITIES IN THIS STATE.

12 (5) IF THE MICHIGAN FILM OFFICE DETERMINES THAT A TAXPAYER HAS
13 COMPLIED WITH THE TERMS OF AN AGREEMENT ENTERED INTO UNDER THIS
14 SECTION, THE OFFICE SHALL ISSUE AN INVESTMENT EXPENDITURE
15 CERTIFICATE TO THE TAXPAYER. THE TAXPAYER SHALL SUBMIT A REQUEST TO
16 THE OFFICE FOR AN INVESTMENT EXPENDITURE CERTIFICATE ON A FORM
17 PRESCRIBED BY THE OFFICE, ALONG WITH ANY INFORMATION OR INDEPENDENT
18 CERTIFICATION THE OFFICE OR THE DEPARTMENT DEEMS NECESSARY. THE
19 OFFICE SHALL PROCESS EACH REQUEST WITHIN 60 DAYS AFTER THE REQUEST
20 IS COMPLETE. HOWEVER, THE OFFICE MAY REQUEST ADDITIONAL INFORMATION
21 OR INDEPENDENT CERTIFICATION BEFORE ISSUING AN INVESTMENT
22 EXPENDITURE CERTIFICATE AND NEED NOT ISSUE THE INVESTMENT
23 EXPENDITURE CERTIFICATE UNTIL SATISFIED THAT INVESTMENT
24 EXPENDITURES AND ELIGIBILITY ARE ADEQUATELY ESTABLISHED. THE
25 ADDITIONAL INFORMATION REQUESTED MAY INCLUDE A REPORT OF
26 EXPENDITURES AUDITED AND CERTIFIED BY AN INDEPENDENT CERTIFIED
27 PUBLIC ACCOUNTANT. EACH INVESTMENT EXPENDITURE CERTIFICATE SHALL BE

1 SIGNED BY THE MICHIGAN FILM COMMISSIONER AND SHALL INCLUDE THE
2 FOLLOWING INFORMATION:

3 (A) THE NAME OF THE TAXPAYER.

4 (B) A DESCRIPTION OF THE QUALIFIED FILM AND DIGITAL MEDIA
5 INFRASTRUCTURE PROJECT.

6 (C) THE TAXPAYER'S ELIGIBLE INVESTMENT EXPENDITURES FOR THE
7 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT.

8 (D) THE UNIQUE NUMBER ASSIGNED TO THE QUALIFIED FILM AND
9 DIGITAL MEDIA INFRASTRUCTURE PROJECT BY THE OFFICE UNDER SUBSECTION
10 (3).

11 (E) THE TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER OR
12 MICHIGAN TREASURY NUMBER.

13 (F) ANY INDEPENDENT CERTIFICATION REQUIRED BY THE DEPARTMENT
14 OR THE MICHIGAN FILM OFFICE.

15 (6) INFORMATION, RECORDS, OR OTHER DATA RECEIVED, PREPARED,
16 USED, OR RETAINED BY THE MICHIGAN FILM OFFICE UNDER THIS SECTION
17 THAT ARE SUBMITTED BY AN ELIGIBLE PRODUCTION COMPANY AND CONSIDERED
18 BY THE TAXPAYER AND ACKNOWLEDGED BY THE OFFICE AS CONFIDENTIAL
19 SHALL NOT BE SUBJECT TO THE DISCLOSURE REQUIREMENTS OF THE FREEDOM
20 OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246. INFORMATION,
21 RECORDS, OR OTHER DATA SHALL ONLY BE CONSIDERED CONFIDENTIAL TO THE
22 EXTENT THAT THE INFORMATION OR RECORDS DESCRIBE THE COMMERCIAL AND
23 FINANCIAL OPERATIONS OR INTELLECTUAL PROPERTY OF THE COMPANY, THE
24 INFORMATION OR RECORDS HAVE NOT BEEN PUBLICLY DISSEMINATED AT ANY
25 TIME, AND DISCLOSURE OF THE INFORMATION OR RECORDS MAY PUT THE
26 COMPANY AT A COMPETITIVE DISADVANTAGE.

27 (7) TO CLAIM A CREDIT UNDER THIS SECTION, A TAXPAYER SHALL

1 SUBMIT AN INVESTMENT EXPENDITURE CERTIFICATE ISSUED UNDER
2 SUBSECTION (5) TO THE DEPARTMENT. IF THE CREDIT ALLOWED UNDER THIS
3 SECTION EXCEEDS THE AMOUNT OF TAXES OWED BY THE TAXPAYER UNDER THIS
4 ACT FOR A TAX YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX
5 LIABILITY OF THE TAXPAYER FOR THE TAX YEAR SHALL NOT BE REFUNDED
6 BUT MAY BE CARRIED FORWARD TO OFFSET TAX LIABILITY UNDER THIS ACT
7 IN SUBSEQUENT TAX YEARS FOR A PERIOD NOT TO EXCEED 10 TAX YEARS OR
8 UNTIL USED UP, WHICHEVER OCCURS FIRST.

9 (8) THE CREDIT UNDER THIS SECTION SHALL BE CLAIMED AFTER ALL
10 OTHER CREDITS UNDER THIS ACT. A TAXPAYER ELIGIBLE TO CLAIM A CREDIT
11 UNDER THIS SECTION MAY ASSIGN ALL OR A PORTION OF A CREDIT UNDER
12 THIS SECTION TO ANY ASSIGNEE. AN ASSIGNEE MAY SUBSEQUENTLY ASSIGN A
13 CREDIT OR ANY PORTION OF A CREDIT ASSIGNED UNDER THIS SUBSECTION TO
14 1 OR MORE ASSIGNEES. A TAXPAYER MAY CLAIM A PORTION OF A CREDIT AND
15 ASSIGN THE REMAINING CREDIT AMOUNT. A CREDIT ASSIGNMENT UNDER THIS
16 SUBSECTION IS IRREVOCABLE. THE CREDIT ASSIGNMENT UNDER THIS
17 SUBSECTION SHALL BE MADE ON A FORM PRESCRIBED BY THE DEPARTMENT. A
18 TAXPAYER CLAIMING A CREDIT UNDER THIS SECTION SHALL SEND A COPY OF
19 THE COMPLETED ASSIGNMENT FORM TO THE DEPARTMENT IN THE TAX YEAR IN
20 WHICH THE ASSIGNMENT IS MADE AND SHALL ATTACH A COPY OF THE FORM TO
21 THE RETURN ON WHICH THE CREDIT IS CLAIMED.

22 (9) THE AMOUNT OF THE CREDIT UNDER THIS SECTION SHALL BE
23 REDUCED BY A CREDIT APPLICATION AND REDEMPTION FEE EQUAL TO 0.5% OF
24 THE CREDIT CLAIMED, WHICH SHALL BE DEDUCTED FROM THE CREDIT
25 OTHERWISE PAYABLE TO THE TAXPAYER CLAIMING THE CREDIT AND BE
26 DEPOSITED BY THE DEPARTMENT IN THE MICHIGAN FILM PROMOTION FUND.

27 (10) A TAXPAYER THAT WILLFULLY SUBMITS INFORMATION UNDER THIS

1 SECTION THAT THE TAXPAYER KNOWS TO BE FRAUDULENT OR FALSE SHALL, IN
2 ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW, BE LIABLE FOR A
3 CIVIL PENALTY EQUAL TO THE AMOUNT OF THE TAXPAYER'S CREDIT UNDER
4 THIS SECTION. A PENALTY COLLECTED UNDER THIS SECTION SHALL BE
5 DEPOSITED IN THE MICHIGAN FILM PRODUCTION PROMOTION FUND.

6 (11) AS USED IN THIS SECTION:

7 (A) "BASE INVESTMENT" MEANS THE COST, INCLUDING FABRICATION
8 AND INSTALLATION, PAID OR ACCRUED IN THE TAXABLE YEAR OF TANGIBLE
9 ASSETS OF A TYPE THAT ARE, OR UNDER THE INTERNAL REVENUE CODE WILL
10 BECOME, ELIGIBLE FOR DEPRECIATION, AMORTIZATION, OR ACCELERATED
11 CAPITAL COST RECOVERY FOR FEDERAL INCOME TAX PURPOSES, PROVIDED
12 THAT THE ASSETS ARE PHYSICALLY LOCATED IN THIS STATE FOR USE IN A
13 BUSINESS ACTIVITY IN THIS STATE AND ARE NOT MOBILE TANGIBLE ASSETS
14 EXPENDED BY A PERSON IN THE DEVELOPMENT OF A QUALIFIED FILM AND
15 DIGITAL MEDIA INFRASTRUCTURE PROJECT. BASE INVESTMENT DOES NOT
16 INCLUDE A DIRECT PRODUCTION EXPENDITURE OR QUALIFIED PERSONNEL
17 EXPENDITURE ELIGIBLE FOR A CREDIT UNDER SECTION 455.

18 (B) "MICHIGAN FILM OFFICE" OR "OFFICE" MEANS THE MICHIGAN FILM
19 OFFICE CREATED UNDER CHAPTER 2A OF THE MICHIGAN STRATEGIC FUND ACT,
20 1984 PA 270, MCL 125.2029 TO 125.2029G.

21 (C) "MICHIGAN FILM PROMOTION FUND" MEANS THE FUND CREATED
22 UNDER CHAPTER 2A OF THE MICHIGAN STRATEGIC FUND ACT, 1984 PA 270,
23 MCL 125.2029 TO 125.2029G.

24 (D) "QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT"
25 MEANS A FILM, VIDEO, TELEVISION, OR DIGITAL MEDIA PRODUCTION AND
26 POSTPRODUCTION FACILITY LOCATED IN THIS STATE, MOVABLE AND
27 IMMOVABLE PROPERTY AND EQUIPMENT RELATED TO THE FACILITY, AND ANY

1 OTHER FACILITY THAT IS A NECESSARY COMPONENT OF THE PRIMARY
2 FACILITY. A QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT
3 DOES NOT INCLUDE A MOVIE THEATER OR OTHER COMMERCIAL EXHIBITION
4 FACILITY, A FACILITY USED TO PRODUCE OBSCENE MATTER OR AN OBSCENE
5 PERFORMANCE AS DESCRIBED IN 1984 PA 343, MCL 752.361 TO 752.374, OR
6 A FACILITY USED FOR A PRODUCTION FOR WHICH RECORDS ARE REQUIRED TO
7 BE MAINTAINED WITH RESPECT TO ANY PERFORMER IN THE PRODUCTION UNDER
8 18 USC 2257.