

HOUSE BILL No. 6563

October 15, 2008, Introduced by Rep. Cushingberry and referred to the Committee on Commerce.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 455 (MCL 208.1455), as added by 2008 PA 77.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 455. (1) The Michigan film office, with the concurrence
2 of the state treasurer, may enter into an agreement with an
3 eligible production company providing the company with a credit
4 against the tax imposed by this act or against taxes withheld under
5 chapter 7 of the income tax act of 1967, 1967 PA 281, MCL 206.351
6 to 206.367, as provided under this section and section 367 of the
7 income tax act of 1967, 1967 PA 281, MCL 206.367. **THE MICHIGAN FILM**
8 **OFFICE, WITH THE CONCURRENCE OF THE STATE TREASURER, SHALL ENTER**
9 **INTO A LIMITED NUMBER OF AGREEMENTS UNDER THIS SECTION DURING EACH**
10 **CALENDAR YEAR AS PROVIDED IN SUBSECTION (6).** To qualify for the

1 credit under this section, a company shall meet all of the
2 following requirements:

3 (a) Spend at least \$50,000.00 in this state for the
4 development, preproduction, production, or postproduction costs of
5 a state certified qualified production.

6 (b) Enter into an agreement as provided in this section.

7 (c) Receive a postproduction certificate of completion from
8 the office under subsection (5).

9 (d) Submit the postproduction certificate of completion issued
10 by the office under subsection (5) to the department under
11 subsection (7).

12 (e) Shall not be delinquent in a tax or other obligation owed
13 to this state or be owned or under common control of an entity that
14 is delinquent in a tax or other obligation owed to this state.

15 (2) For direct production expenditures or qualified personnel
16 expenditures made after February 29, 2008, an agreement under this
17 section may provide for an eligible production company to claim a
18 tax credit equal to 42% of direct production expenditures for a
19 state certified qualified production in a core community, 40% of
20 direct production expenditures for a state certified qualified
21 production in part of this state other than a core community, and
22 30% for qualified personnel expenditures. A taxpayer shall not
23 claim a credit under this section for any of the following:

24 (a) A direct expenditure, or qualified personnel expenditure,
25 for which the company claims a credit under section 459.

26 (b) A direct expenditure, or qualified personnel expenditure,
27 for which the company claims a credit under section 367 of the

1 income tax act of 1967, 1967 PA 281, MCL 206.367.

2 (c) A direct expenditure, or qualified personnel expenditure,
3 for which another taxpayer claims a credit under this section, a
4 credit under section 459, or a credit under section 367 of the
5 income tax act of 1967, 1967 PA 281, MCL 206.367.

6 (3) An eligible production company intending to produce a
7 qualified production in this state, or that initiated production of
8 a qualified production after February 29, 2008 and before ~~the~~
9 ~~effective date of the amendatory act that added this section~~ **APRIL**
10 **8, 2008**, may submit an application to enter into an agreement under
11 this section to the Michigan film office. Except for a qualified
12 production for which production was initiated after February 29,
13 2008 and before ~~the effective date of the amendatory act that added~~
14 ~~this section~~ **APRIL 8, 2008**, direct production expenditures and
15 qualified personnel expenditures incurred prior to approval of an
16 agreement under this section are not eligible for the credit under
17 this section. The request shall be submitted in a form prescribed
18 by the Michigan film office and shall be accompanied by a \$100.00
19 application fee and all of the information and records requested by
20 the office. An application fee received by the office under this
21 subsection shall be deposited in the Michigan film promotion fund.
22 The office shall not process the application until it is complete.
23 As part of the application, the company shall estimate direct
24 production expenditures and qualified personnel expenditures for an
25 identified qualified production. If the office, with the
26 concurrence of the state treasurer, determines to enter into an
27 agreement under this section, the agreement shall provide for all

1 of the following:

2 (a) A requirement that the eligible production company
3 commence work in this state on the identified qualified production
4 within 90 days of the date of the agreement or else the agreement
5 shall expire. However, upon request submitted by the company based
6 on good cause, the office may extend the period for commencement of
7 work in this state for up to an additional 90 days.

8 (b) A statement identifying the company and the qualified
9 production that the company intends to produce in whole or in part
10 in this state.

11 (c) A unique number assigned to the qualified production by
12 the office.

13 (d) A requirement that the qualified production not depict
14 obscene matter or an obscene performance.

15 (e) If the qualified production is a long-form narrative film
16 production, a requirement that the qualified production include an
17 acknowledgement that the qualified production was filmed in this
18 state.

19 (f) A requirement that the company provide the office with the
20 information and independent certification the office and the
21 department deem necessary to verify direct production expenditures,
22 qualified personnel expenditures, and eligibility for the credit
23 under this section.

24 (g) If determined to be necessary by the office and the state
25 treasurer, a provision for addressing expenditures in excess of
26 those identified in the agreement.

27 (4) In determining whether to enter into an agreement under

1 this section, the Michigan film office and the state treasurer
2 shall consider all of the following:

3 (a) The potential that in the absence of the credit the
4 qualified production will be produced in a location other than this
5 state.

6 (b) The extent to which the qualified production may have the
7 effect of promoting this state as a tourist destination.

8 (c) The extent to which the qualified production may have the
9 effect of promoting economic development or job creation in this
10 state.

11 (d) The extent to which the credit will attract private
12 investment for the production of qualified productions in this
13 state.

14 (e) The record of the eligible production company in
15 completing commitments to engage in a qualified production.

16 (5) If the Michigan film office determines that an eligible
17 production company has complied with the terms of an agreement
18 entered into under this section, the office shall issue a
19 postproduction certificate to the company. The company shall submit
20 a request to the office for a postproduction certificate on a form
21 prescribed by the office, along with any information or independent
22 certification the office or the department deems necessary. The
23 office shall process each request within 60 days after the request
24 is complete. However, the office may request additional information
25 or independent certification before issuing a postproduction
26 certificate of completion and need not issue the postproduction
27 certificate until satisfied that direct production expenditures,

1 qualified personnel expenditures, and eligibility are adequately
2 established. The additional information requested may include a
3 report of direct production expenditures and qualified personnel
4 expenditures for the qualified production audited and certified by
5 an independent certified public accountant. Each postproduction
6 certificate of completion shall be signed by the Michigan film
7 commissioner and shall include the following information:

8 (a) The name of the eligible production company.

9 (b) The name of the certified production produced in whole or
10 in part in this state.

11 (c) The eligible production company's direct production
12 expenditures and qualified personnel expenditures for the qualified
13 production.

14 (d) The date of completion for the qualified production in
15 this state.

16 (e) The unique number assigned to the qualified production
17 project by the Michigan film office under subsection (3).

18 (f) The eligible production company's federal employer
19 identification number or Michigan treasury number.

20 (g) Any independent certification required by the department
21 or the Michigan film office.

22 **(6) FOR THE 2008 CALENDAR YEAR AND EACH CALENDAR YEAR**
23 **THEREAFTER, THE TOTAL OF ALL CREDITS FOR ALL POSTPRODUCTION**
24 **CERTIFICATES OF COMPLETION ISSUED UNDER SUBSECTION (5) DURING THE**
25 **CALENDAR YEAR SHALL NOT EXCEED \$112,000,000.00.**

26 **(7) ~~(6)~~—**Information, records, or other data received,
27 prepared, used, or retained by the Michigan film office under this

1 section that are submitted by an eligible production company and
2 considered by the taxpayer and acknowledged by the office as
3 confidential shall not be subject to the disclosure requirements of
4 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
5 Information, records, or other data shall only be considered
6 confidential to the extent that the information or records describe
7 the commercial and financial operations or intellectual property of
8 the company, the information or records have not been publicly
9 disseminated at any time, and disclosure of the information or
10 records may put the company at a competitive disadvantage.

11 (8) ~~(7)~~—An eligible production company shall submit a
12 postproduction certificate of completion issued under subsection
13 (5) to the department. If the credit allowed under this section
14 exceeds the tax liability of the company for the tax year or if the
15 company claiming the credit does not have a tax liability under
16 this act for the tax year, the department shall refund the excess
17 or pay the amount of the credit to the company. The credit under
18 this section shall be claimed after all other credits under this
19 act.

20 (9) ~~(8)~~—An eligible production company may assign all or a
21 portion of a credit under this section to any assignee. An assignee
22 may subsequently assign a credit or any portion of a credit
23 assigned under this subsection to 1 or more assignees. A company
24 may claim a portion of a credit and assign the remaining credit
25 amount. A credit assignment under this subsection is irrevocable.
26 The credit assignment under this subsection shall be made on a form
27 prescribed by the department. The qualified taxpayer shall send a

1 copy of the completed assignment form to the department in the tax
2 year in which the assignment is made and shall attach a copy of the
3 form to the return on which the credit is claimed.

4 (10) ~~(9)~~—The amount of the credit under this section shall be
5 reduced by a credit application and redemption fee equal to 0.5% of
6 the credit claimed, which shall be deducted from the credit
7 otherwise payable to the taxpayer claiming the credit and be
8 deposited by the department in the Michigan film promotion fund.

9 (11) ~~(10)~~—A taxpayer that willfully submits information under
10 this section that the taxpayer knows to be fraudulent or false
11 shall, in addition to any other penalties provided by law, be
12 liable for a civil penalty equal to the amount of the taxpayer's
13 credit under this section. A penalty collected under this section
14 shall be deposited in the Michigan film promotion fund.

15 (12) ~~(11)~~—Not later than March 1 of each year after 2008, the
16 Michigan film office shall submit to the governor, the president of
17 the Michigan strategic fund, the chairperson of the senate finance
18 committee, and the house tax policy committee an annual report
19 concerning the operation and effectiveness of the credit under this
20 section. The requirements of section 28(1)(f) of 1941 PA 122, MCL
21 205.28, do not apply to disclosure of tax information required by
22 this subsection. The report shall include all of the following:

23 (a) A brief assessment of the overall effectiveness of the
24 credit under this section at attracting qualified productions to
25 this state during the immediately preceding calendar year.

26 (b) The number of qualified productions for which the eligible
27 production company applied for a tax credit under this section

1 during the immediately preceding year, the names of the qualified
2 productions produced in this state for which credits were begun or
3 completed in the immediately preceding year, and the locations in
4 this state that were used in the production of qualified
5 productions in the immediately preceding calendar year.

6 (c) The amount of money spent by each eligible production
7 company identified in subdivision (b) to produce each qualified
8 production in this state and a breakdown of all production spending
9 by all companies classified as goods, services, or salaries and
10 wages in the immediately preceding calendar year.

11 (d) An estimate of the number of persons employed in this
12 state by eligible production companies that qualified for the
13 credit under this section in the immediately preceding calendar
14 year.

15 (e) The value of all tax credit certificates of completion
16 issued under this section in the immediately preceding calendar
17 year.

18 (13) ~~(12)~~As used in this section:

19 (a) "Below the line crew" means that term as defined under
20 section 459.

21 (b) "Core community" means a qualified local governmental unit
22 as defined under section 2 of the obsolete property rehabilitation
23 act, 2000 PA 146, MCL 125.2782.

24 (c) "Direct production expenditure" means a development,
25 preproduction, production, or postproduction expenditure made in
26 this state that is not a qualified personnel expenditure directly
27 attributable to the production or distribution of a qualified

1 production that is a transaction subject to taxation in this state,
2 including, but not limited to, all of the following:

3 (i) Payments to vendors doing business in this state to
4 purchase or use tangible personal property in producing or
5 distributing the qualified production or to purchase services
6 relating to the production or distribution of the qualified
7 production, including all of the following:

8 (A) Expenditures for optioning or purchasing intellectual
9 property including, but not limited to, books, scripts, music, or
10 trademarks relating to the development or purchase of a script,
11 story, scenario, screenplay, or format, including all expenditures
12 generally associated with the optioning or purchase of intellectual
13 property, including option money, agent fees, and attorney fees
14 relating to the transaction, but not including deferrals,
15 deferments, royalties, profit participation, or recourse or
16 nonrecourse loans negotiated by the eligible production company to
17 obtain the rights to the intellectual property.

18 (B) Production work, production equipment, production
19 software, development work, postproduction work, postproduction
20 equipment, postproduction software, set design, set construction,
21 set operations, props, lighting, wardrobe, makeup, makeup
22 accessories, photography, sound synchronization, special effects,
23 visual effects, audio effects, film processing, music, sound
24 mixing, editing, and related services and materials.

25 (C) Use of facilities or equipment, use of soundstages or
26 studios, location fees, and related services and materials.

27 (D) Catering, food, lodging, and related services and

1 materials.

2 (E) Use of vehicles, which may include chartered aircraft
3 based in this state used for transportation in this state directly
4 attributable to production of a qualified production, but may not
5 include the chartering of aircraft for transportation outside of
6 this state.

7 (F) Commercial airfare if purchased through a travel agency or
8 travel company based in this state for travel to and from this
9 state or within this state directly attributable to production or
10 distribution of a qualified production.

11 (G) Insurance coverage or bonding if purchased from an
12 insurance agent based in this state.

13 (H) Expenditures for distribution, including, but not limited
14 to, both of the following:

15 (I) Preproduction, production, or postproduction costs
16 relating to the creation of trailers, marketing videos,
17 commercials, point-of-purchase videos, and content created on film
18 or digital media, including, but not limited to, the duplication of
19 films, videos, compact discs, digital video discs, and digital
20 files or other digital media created for consumer consumption.

21 (II) Purchase of equipment relating to the duplication or
22 market distribution of any content created or produced in this
23 state.

24 (I) Other expenditures for production of a qualified
25 production in accordance with generally accepted entertainment
26 industry practices.

27 (ii) Payments and compensation, not to exceed \$2,000,000.00 for

1 any 1 employee or contractual or salaried employee who performs
2 services in this state for the production or distribution of a
3 qualified production, including all of the following:

4 (A) Payment of wages, benefits, or fees for talent,
5 management, or labor.

6 (B) Payment to a personal services corporation or professional
7 employer organization for the services of a performing artist or
8 crew member if the personal services corporation or professional
9 employer organization is subject to the tax levied under this act
10 on the portion of the payment qualifying for the tax credit under
11 this section and the payments received by the performing artist or
12 crew member that are subject to taxation under the income tax act
13 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and
14 paid to this state in the amount provided under section 351 of the
15 income tax act of 1967, 1967 PA 281, MCL 206.351.

16 (d) "Eligible production company" or "company" means an entity
17 in the business of producing qualified productions, but does not
18 include an entity that is more than 30% owned, affiliated, or
19 controlled by an entity or individual who is in default on a loan
20 made by this state, a loan guaranteed by this state, or a loan made
21 or guaranteed by any other state.

22 (e) "Interactive website" means a website, the production
23 costs of which exceed \$500,000.00 in an annual period and primarily
24 includes interactive games, end user applications, animation,
25 simulation, sound, graphics, story lines, or video created or
26 repurposed for distribution over the internet. Interactive website
27 does not include a website primarily used for institutional,

1 private, industrial, retail, or wholesale marketing or promotional
2 purposes, or which contains obscene matter or an obscene
3 performance.

4 (f) "Michigan film office" or "office" means the Michigan film
5 office created under chapter 2A of the Michigan strategic fund act,
6 1984 PA 270, MCL 125.2029 to 125.2029g.

7 (g) "Michigan film promotion fund" means the fund created
8 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,
9 MCL 125.2029 to 125.2029g.

10 (h) "Obscene matter or an obscene performance" means matter
11 described in 1984 PA 343, MCL 752.361 to 752.374.

12 (i) "Postproduction expenditure" means a direct expenditure
13 for editing, Foley recording, automatic dialogue replacement, sound
14 editing, special or visual effects including computer-generated
15 imagery or other effects, scoring and music editing, beginning and
16 end credits, negative cutting, soundtrack production, dubbing,
17 subtitling, or addition of sound or visual effects. Postproduction
18 expenditure includes direct expenditures for advertising,
19 marketing, distribution, or related expenses.

20 (j) "Qualified personnel expenditure" means an expenditure
21 made in this state directly attributable to the production or
22 distribution of a qualified production that is a transaction
23 subject to taxation in this state and is a payment or compensation
24 payable to below the line crew for below the line crew members who
25 were not residents of this state for at least 60 days before
26 approval of the agreement for the qualified production under
27 subsection (3), not to exceed \$2,000,000.00 for any 1 employee or

1 contractual or salaried employee who performs service in this state
2 for the production of a qualified production, including both of the
3 following:

4 (i) Payment of wages, benefits, or fees.

5 (ii) Payment to a personal services corporation or professional
6 employer organization for the services of a performing artist or
7 crew member if the personal services corporation or professional
8 employer organization is subject to the tax levied under this act
9 on the portion of the payment qualifying for the tax credit under
10 this section and the payments received by the performing artist or
11 crew member that are subject to taxation under the income tax act
12 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and
13 paid to this state in the amount provided under section 351 of the
14 income tax act of 1967, 1967 PA 281, MCL 206.351.

15 (k) "State certified qualified production" or "qualified
16 production" means single media or multimedia entertainment content
17 created in whole or in part in this state for distribution or
18 exhibition to the general public in 2 or more states by any means
19 and media in any digital media format, film, or video tape,
20 including, but not limited to, a motion picture, a documentary, a
21 television series, a television miniseries, a television special,
22 interstitial television programming, long-form television,
23 interactive television, music videos, interactive games, video
24 games, commercials, internet programming, an internet video, a
25 sound recording, a video, digital animation, or an interactive
26 website. Qualified production also includes any trailer, pilot,
27 video teaser, or demo created primarily to stimulate the sale,

1 marketing, promotion, or exploitation of future investment in a
2 production. Qualified production does not include any of the
3 following:

4 (i) A production for which records are required to be
5 maintained with respect to any performer in the production under 18
6 USC 2257.

7 (ii) A production that includes obscene matter or an obscene
8 performance.

9 (iii) A production that primarily consists of televised news or
10 current events.

11 (iv) A production that primarily consists of a live sporting
12 event.

13 (v) A production that primarily consists of political
14 advertising.

15 (vi) A radio program.

16 (vii) A weather show.

17 (viii) A financial market report.

18 (ix) A talk show.

19 (x) A game show.

20 (xi) A production that primarily markets a product or service
21 other than a state certified qualified production.

22 (xii) An awards show or other gala event production.

23 (xiii) A production with the primary purpose of fund-raising.

24 (xiv) A production that primarily is for employee training or
25 in-house corporate advertising or other similar production.

26 (l) "Sound recording" means a recording of music, poetry, or
27 spoken-word performance, but does not include the audio portions

1 spoken and recorded as part of a motion picture, video, theatrical
2 production, television news coverage, or athletic event.

3 (m) "State certified qualified production" means a qualified
4 production for which a postproduction certificate has been issued
5 by the office under subsection (5).