

SENATE BILL No. 1173

March 4, 2008, Introduced by Senators CLARKE, ALLEN, VAN WOERKOM, KUIPERS, BIRKHOLZ, STAMAS, BROWN, GILBERT, JANSEN, HARDIMAN, McMANUS, PAPPAGEORGE, RICHARDVILLE, JELINEK, KAHN, GEORGE, GARCIA, JACOBS, CHERRY, WHITMER, PRUSI, GLEASON, BARCIA, THOMAS, ANDERSON, SCHAUER, HUNTER and OLSHOVE and referred to the Committee on Commerce and Tourism.

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) INVEST AND EXPEND AT LEAST \$250,000.00 FOR A QUALIFIED
9 FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT IN THIS STATE.

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

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

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

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

9 (2) FOR INVESTMENT EXPENDITURES MADE BY A TAXPAYER FOR ALL
10 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECTS IN THIS
11 STATE, AN AGREEMENT UNDER THIS SECTION MAY PROVIDE FOR THE TAXPAYER
12 TO CLAIM A TAX CREDIT EQUAL TO 25% OF THE TAXPAYER'S BASE
13 INVESTMENT. THE CREDIT UNDER THIS SECTION SHALL BE REDUCED BY ANY
14 CREDIT CLAIMED BY THE TAXPAYER UNDER SECTION 437 FOR THE SAME BASE
15 INVESTMENT. NO MORE THAN \$10,000,000.00 IN TOTAL CREDITS UNDER THIS
16 SECTION SHALL BE AUTHORIZED IN A TAX YEAR. IF ALL OR A PORTION OF A
17 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT IS A
18 FACILITY THAT MAY BE USED FOR PURPOSES UNRELATED TO PRODUCTION OR
19 POSTPRODUCTION ACTIVITIES, THEN THE PROJECT IS ELIGIBLE FOR THE
20 CREDIT ONLY IF THE DEPARTMENT DETERMINES THAT THE FACILITY WILL
21 SUPPORT AND BE NECESSARY TO SECURE PRODUCTION OR POSTPRODUCTION
22 ACTIVITY FOR THE PRODUCTION AND POSTPRODUCTION FACILITY AND THE
23 TAXPAYER AGREES TO BOTH OF THE FOLLOWING:

24 (A) THE FACILITY WILL BE USED AS A STATE OF THE ART PRODUCTION
25 OR POSTPRODUCTION FACILITY OR AS SUPPORT AND COMPONENT OF THE
26 FACILITY FOR THE USEFUL LIFE OF THE FACILITY.

27 (B) A CREDIT WILL NOT BE CLAIMED UNDER THIS SECTION UNTIL THE

1 FACILITY IS COMPLETE.

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

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

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

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

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

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

27 (F) ESTIMATED START DATE AND COMPLETION DATE FOR THE QUALIFIED

1 FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT.

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

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

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

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

24 (A) THE POTENTIAL THAT IN THE ABSENCE OF THE CREDIT THE
25 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT WILL BE
26 CONSTRUCTED IN A LOCATION OTHER THAN THIS STATE.

27 (B) THE EXTENT TO WHICH THE QUALIFIED FILM AND DIGITAL MEDIA

1 INFRASTRUCTURE PROJECT MAY HAVE THE EFFECT OF PROMOTING ECONOMIC
2 DEVELOPMENT OR JOB CREATION IN THIS STATE.

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

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

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

27 (A) THE NAME OF THE TAXPAYER.

1 (B) A DESCRIPTION OF THE QUALIFIED FILM AND DIGITAL MEDIA
2 INFRASTRUCTURE PROJECT.

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

5 (D) THE UNIQUE NUMBER ASSIGNED TO THE QUALIFIED FILM AND
6 DIGITAL MEDIA INFRASTRUCTURE PROJECT BY THE OFFICE UNDER SUBSECTION
7 (3).

8 (E) THE TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER OR
9 MICHIGAN TREASURY NUMBER.

10 (F) ANY INDEPENDENT CERTIFICATION REQUIRED BY THE DEPARTMENT
11 OR THE MICHIGAN FILM OFFICE.

12 (6) INFORMATION AND RECORDS SUBMITTED BY A TAXPAYER TO THE
13 MICHIGAN FILM OFFICE UNDER THIS SECTION SHALL BE CONSIDERED
14 CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER THE FREEDOM OF
15 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246, TO THE EXTENT
16 THAT THE INFORMATION OR RECORDS DESCRIBE THE COMMERCIAL AND
17 FINANCIAL OPERATIONS OF THE TAXPAYER, THE INFORMATION OR RECORDS
18 HAVE NOT BEEN PUBLICLY DISSEMINATED AT ANY TIME, AND DISCLOSURE OF
19 THE INFORMATION OR RECORDS MIGHT PUT THE TAXPAYER AT A COMPETITIVE
20 DISADVANTAGE. A TAXPAYER SUBMITTING MATERIALS UNDER THIS SECTION
21 SHALL SPECIFICALLY DESIGNATE ANY INFORMATION AND RECORDS THAT THE
22 TAXPAYER DEEMS CONFIDENTIAL. THE OFFICE MAY RELEASE ANY INFORMATION
23 AND RECORDS SUBMITTED UNDER THIS SECTION THAT HAVE NOT BEEN
24 DESIGNATED CONFIDENTIAL BY THE TAXPAYER.

25 (7) TO CLAIM A CREDIT UNDER THIS SECTION, A TAXPAYER SHALL
26 SUBMIT AN INVESTMENT EXPENDITURE CERTIFICATE ISSUED UNDER
27 SUBSECTION (5) TO THE DEPARTMENT. IF THE CREDIT ALLOWED UNDER THIS

1 SECTION EXCEEDS THE AMOUNT OF TAXES OWED BY THE TAXPAYER UNDER THIS
2 ACT FOR A TAX YEAR, THAT PORTION OF THE CREDIT THAT EXCEEDS THE TAX
3 LIABILITY OF THE TAXPAYER FOR THE TAX YEAR SHALL NOT BE REFUNDED
4 BUT MAY BE CARRIED FORWARD TO OFFSET TAX LIABILITY UNDER THIS ACT
5 IN SUBSEQUENT TAX YEARS FOR A PERIOD NOT TO EXCEED 10 TAX YEARS OR
6 UNTIL USED UP, WHICHEVER OCCURS FIRST.

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

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

25 (10) A TAXPAYER THAT WILLFULLY SUBMITS INFORMATION UNDER THIS
26 SECTION THAT THE TAXPAYER KNOWS TO BE FRAUDULENT OR FALSE SHALL, IN
27 ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW, BE LIABLE FOR A

1 CIVIL PENALTY EQUAL TO THE AMOUNT OF THE TAXPAYER'S CREDIT UNDER
2 THIS SECTION. A PENALTY COLLECTED UNDER THIS SECTION SHALL BE
3 DEPOSITED IN THE MICHIGAN FILM PRODUCTION PROMOTION FUND.

4 (11) AS USED IN THIS SECTION:

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

14 (B) "MICHIGAN FILM OFFICE" OR "OFFICE" MEANS THE MICHIGAN FILM
15 OFFICE CREATED UNDER CHAPTER 2A OF THE MICHIGAN STRATEGIC FUND ACT,
16 1984 PA 270, MCL 125.2029 TO 125.2029G.

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

20 (D) "QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT"
21 MEANS A FILM, VIDEO, TELEVISION, OR DIGITAL MEDIA PRODUCTION AND
22 POSTPRODUCTION FACILITY LOCATED, MOVABLE AND IMMOVABLE PROPERTY AND
23 EQUIPMENT RELATED TO THE FACILITY, AND ANY OTHER FACILITY THAT
24 SUPPORTS AND IS A NECESSARY COMPONENT OF THE FACILITY. A QUALIFIED
25 FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT DOES NOT INCLUDE A
26 MOVIE THEATER OR OTHER COMMERCIAL EXHIBITION FACILITY.