

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 796

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. To qualify for
8 the credit under this section, a company shall meet all of the
9 following requirements:

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

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

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

7 (d) Submit the postproduction certificate of completion issued
8 by the office under subsection (5) to the department under
9 subsection ~~(7)~~—(8).

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

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

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

24 (b) A direct expenditure, or qualified personnel expenditure,
25 for which the company claims a credit under section 367 of the
26 income tax act of 1967, 1967 PA 281, MCL 206.367.

27 (c) A direct expenditure, or qualified personnel expenditure,

1 for which another taxpayer claims a credit under this section, a
2 credit under section 459, or a credit under section 367 of the
3 income tax act of 1967, 1967 PA 281, MCL 206.367.

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

27 (a) A requirement that the eligible production company

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

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

9 (c) A unique number assigned to the qualified production by
10 the office.

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

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

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

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

25 (4) In determining whether to enter into an agreement under
26 this section, the Michigan film office and the state treasurer
27 shall consider all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (6) Information, records, or other data received, prepared,
22 used, or retained by the Michigan film office under this section
23 that are submitted by an eligible production company and considered
24 by the taxpayer and acknowledged by the office as confidential
25 shall not be subject to the disclosure requirements of the freedom
26 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
27 records, or other data shall only be considered confidential to the

1 extent that the information or records describe the commercial and
2 financial operations or intellectual property of the company, the
3 information or records have not been publicly disseminated at any
4 time, and disclosure of the information or records may put the
5 company at a competitive disadvantage. **FOR PURPOSES OF THIS**
6 **SUBSECTION, INFORMATION OR RECORDS THAT DESCRIBE COMMERCIAL AND**
7 **FINANCIAL OPERATIONS DO NOT INCLUDE THAT PORTION OF INFORMATION OR**
8 **RECORDS THAT INCLUDE ANY EXPENSES THAT QUALIFY UNDER THIS SECTION**
9 **AS QUALIFIED PERSONNEL EXPENDITURES OR DIRECT PRODUCTION**
10 **EXPENDITURES AND FOR WHICH A CREDIT MAY BE CLAIMED.**

11 (7) THE MICHIGAN FILM OFFICE SHALL, ON JANUARY 15 AND JULY 15
12 IN EACH YEAR, MAKE AVAILABLE ON ITS WEBSITE A DETAILED SEMIANNUAL
13 REPORT THAT INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

14 (A) THE NUMBER OF APPLICATIONS RECEIVED FOR A CREDIT UNDER
15 THIS SECTION IN THE IMMEDIATELY PRECEDING 6 MONTHS, INCLUDING THE
16 NAME OF THE ELIGIBLE PRODUCTION COMPANY THAT SUBMITTED THE
17 APPLICATION AND A BRIEF DESCRIPTION OF THE PROPOSED QUALIFIED
18 PRODUCTION, INCLUDING THE LOCATIONS IN THIS STATE TO BE USED IN THE
19 PRODUCTION AND THE PROPOSED AMOUNT OF MONEY TO BE EXPENDED BY THE
20 ELIGIBLE PRODUCTION COMPANY TO PRODUCE THE QUALIFIED PRODUCTION IN
21 THIS STATE.

22 (B) THE NUMBER OF APPLICATIONS APPROVED DURING THE IMMEDIATELY
23 PRECEDING 6 MONTHS.

24 (C) THE NUMBER OF POSTPRODUCTION CERTIFICATES OF COMPLETION
25 ISSUED DURING THE IMMEDIATELY PRECEDING 6 MONTHS AND THE TOTAL
26 AMOUNT OF CREDITS CERTIFIED UNDER THOSE POSTPRODUCTION CERTIFICATES
27 OF COMPLETION.

1 (8) ~~(7)~~—An eligible production company shall submit a
2 postproduction certificate of completion issued under subsection
3 (5) to the department. **THE MICHIGAN FILM OFFICE SHALL FORWARD A**
4 **COPY OF EACH POSTPRODUCTION CERTIFICATE OF COMPLETION ISSUED**
5 **PURSUANT TO THIS SUBSECTION TO THE GOVERNOR, THE PRESIDENT OF THE**
6 **MICHIGAN STRATEGIC FUND, THE CHAIRPERSON OF THE SENATE FINANCE**
7 **COMMITTEE, THE CHAIRPERSON OF THE HOUSE TAX POLICY COMMITTEE, THE**
8 **DIRECTOR OF THE SENATE FISCAL AGENCY, AND THE DIRECTOR OF THE HOUSE**
9 **FISCAL AGENCY.** If the credit allowed under this section exceeds the
10 tax liability of the company for the tax year or if the company
11 claiming the credit does not have a tax liability under this act
12 for the tax year, the department shall refund the excess or pay the
13 amount of the credit to the company. **THE DEPARTMENT SHALL, AS SOON**
14 **AS THE INFORMATION IS AVAILABLE, ANNUALLY REPORT TO THE GOVERNOR,**
15 **THE PRESIDENT OF THE MICHIGAN STRATEGIC FUND, THE CHAIRPERSON OF**
16 **THE SENATE FINANCE COMMITTEE, THE CHAIRPERSON OF THE HOUSE TAX**
17 **POLICY COMMITTEE, THE DIRECTOR OF THE SENATE FISCAL AGENCY, AND THE**
18 **DIRECTOR OF THE HOUSE FISCAL AGENCY THE TOTAL AMOUNT OF THE CREDITS**
19 **CERTIFIED UNDER THIS SECTION THAT EXCEED THE TAXPAYER'S TAX**
20 **LIABILITY FOR THE MOST RECENT YEAR THAT TAX INFORMATION IS**
21 **AVAILABLE AND FOR WHICH RETURNS HAVE CLEARED AND BEEN PROCESSED.**
22 The credit under this section shall be claimed after all other
23 credits under this act.

24 (9) ~~(8)~~—An eligible production company may assign all or a
25 portion of a credit under this section to any assignee. An assignee
26 may subsequently assign a credit or any portion of a credit
27 assigned under this subsection to 1 or more assignees. A company

1 may claim a portion of a credit and assign the remaining credit
2 amount. A credit assignment under this subsection is irrevocable.
3 The credit assignment under this subsection shall be made on a form
4 prescribed by the department. The qualified taxpayer shall send a
5 copy of the completed assignment form to the department in the tax
6 year in which the assignment is made and shall attach a copy of the
7 form to the return on which the credit is claimed.

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

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

19 (12) ~~(11)~~—Not later than March 1 of each year after 2008, the
20 Michigan film office shall submit to the governor, the president of
21 the Michigan strategic fund, the chairperson of the senate finance
22 committee, ~~and the~~ **CHAIRPERSON OF THE** house tax policy committee,
23 **THE DIRECTOR OF THE SENATE FISCAL AGENCY, AND THE DIRECTOR OF THE**
24 **HOUSE FISCAL AGENCY** an annual report concerning the operation and
25 effectiveness of the credit under this section. The requirements of
26 section 28(1)(f) of 1941 PA 122, MCL 205.28, do not apply to
27 disclosure of tax information required by this subsection. The

1 report shall include all of the following:

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

5 (b) The number of qualified productions for which the eligible
6 production company applied for a tax credit under this section
7 during the immediately preceding year, the names of the qualified
8 productions produced in this state for which credits were begun or
9 completed in the immediately preceding year, and the locations in
10 this state that were used in the production of qualified
11 productions in the immediately preceding calendar year.

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

17 (d) ~~An estimate of the~~ **THE** number of ~~persons~~ **BELOW THE LINE**
18 **CREW** employed in this state by eligible production companies that
19 qualified for the credit under this section in the immediately
20 preceding calendar year, **HOW MANY OF THOSE PERSONS EMPLOYED WERE**
21 **RESIDENTS OF THIS STATE AND NOT INCLUDED IN QUALIFIED PERSONNEL**
22 **EXPENDITURES, AND THE TOTAL NUMBER OF HOURS WORKED ON THE QUALIFIED**
23 **PRODUCTION FOR WHICH A CREDIT IS GRANTED.**

24 (E) **FOR REQUESTS FOR POSTPRODUCTION CERTIFICATES OF COMPLETION**
25 **SUBMITTED AFTER JANUARY 2, 2011, THE NUMBER OF ABOVE THE LINE**
26 **PERSONNEL EMPLOYED IN THIS STATE BY THE ELIGIBLE PRODUCTION**
27 **COMPANIES THAT QUALIFIED FOR THE CREDIT UNDER THIS SECTION IN THE**

1 IMMEDIATELY PRECEDING CALENDAR YEAR AND HOW MANY OF THOSE PERSONNEL
2 EMPLOYED WERE RESIDENTS OF THIS STATE. FOR PURPOSES OF THIS
3 SUBDIVISION, ABOVE THE LINE PERSONNEL MEANS PERSONNEL WHO ARE NOT
4 BELOW THE LINE CREW.

5 (F) FOR REQUESTS FOR POSTPRODUCTION CERTIFICATES OF COMPLETION
6 SUBMITTED AFTER JANUARY 2, 2011, THE NUMBER OF PERSONS EMPLOYED IN
7 THIS STATE BY THE ELIGIBLE PRODUCTION COMPANIES THAT QUALIFIED FOR
8 THE CREDIT UNDER THIS SECTION IN THE IMMEDIATELY PRECEDING CALENDAR
9 YEAR THAT EARNED MORE THAN \$250,000.00 ON A QUALIFIED PRODUCTION
10 AND HOW MANY OF THOSE PERSONS WERE RESIDENTS OF THIS STATE.

11 (G) ~~(e)~~—The value of all tax credit certificates of completion
12 issued under this section in the immediately preceding calendar
13 year.

14 (H) THE AMOUNT KNOWN BY THE MICHIGAN FILM OFFICE OF OTHER
15 STATE AND LOCAL ASSISTANCE PROVIDED TO ELIGIBLE PRODUCTION
16 COMPANIES IN ADDITION TO THE TAX CREDIT UNDER THIS SECTION.

17 (13) ~~(12)~~—As used in this section:

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

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

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

1 including, but not limited to, all of the following:

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

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

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

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

26 (D) Catering, food, lodging, and related services and
27 materials.

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

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

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

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

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

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

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

26 (ii) Payments and compensation, not to exceed \$2,000,000.00 for
27 any 1 employee or contractual or salaried employee who performs

1 services in this state for the production or distribution of a
2 qualified production, including all of the following:

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

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

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

1 purposes, or which contains obscene matter or an obscene
2 performance.

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

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

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

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

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

1 for the production of a qualified production, including both of the
2 following:

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

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

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

1 production. Qualified production does not include any of the
2 following:

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

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

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

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

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

14 (vi) A radio program.

15 (vii) A weather show.

16 (viii) A financial market report.

17 (ix) A talk show.

18 (x) A game show.

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

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

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

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

25 (l) "Sound recording" means a recording of music, poetry, or
26 spoken-word performance, but does not include the audio portions
27 spoken and recorded as part of a motion picture, video, theatrical

1 production, television news coverage, or athletic event.

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