

HOUSE BILL No. 5431

September 22, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Appropriations.

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 4cc (MCL 205.54cc), as amended by 2008 PA 78.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4cc. (1) For tax years that begin after December 31, 2006
2 through February 29, 2008, the Michigan film office, with the
3 concurrence of the state treasurer, may enter into an agreement
4 with a motion picture production company providing a credit against
5 the tax imposed by this act as provided under subsection (2). To
6 qualify for the credit under this section, a motion picture
7 production company shall meet all of the following requirements:

8 (a) Shall spend at least \$200,000.00 in this state for
9 purposes related to the filming or production of a single motion

1 picture.

2 (b) Shall enter into an agreement as provided in this section.

3 (c) Shall receive a postproduction certificate of completion
4 under subsection (5).

5 (d) Shall submit a postproduction certificate of completion
6 issued under subsection (5) to the department of treasury under
7 subsection (7).

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

11 (2) An agreement under this section may provide for a motion
12 picture production company to claim a tax credit under this section
13 as follows:

14 (a) If the company incurs between \$200,000.00 and
15 \$1,000,000.00 in production spending, up to 12% of its production
16 spending.

17 (b) If the company incurs between \$1,000,000.01 and
18 \$5,000,000.00 in production spending, up to 16% of its production
19 spending.

20 (c) If the company incurs between \$5,000,000.01 and
21 \$10,000,000.00 in production spending, up to 20% of its production
22 spending. However, if a company incurs more than \$10,000,000.00 in
23 production spending, the agreement may provide tax credits based
24 only on the first \$10,000,000.00 of its production spending.

25 (3) A motion picture production company intending to engage in
26 motion picture production in this state may submit an application
27 to enter into an agreement under this section to the Michigan film

1 office. The request shall be submitted in a form prescribed by the
2 Michigan film office and shall be accompanied by all of the
3 information and records requested by the Michigan film office. The
4 Michigan film office shall not process the application until it is
5 complete. As part of the application, the motion picture production
6 company shall estimate its expected production spending for an
7 identified motion picture. If the Michigan film office with the
8 concurrence of the state treasurer determines to enter into an
9 agreement under this section, the agreement shall provide for all
10 of the following:

11 (a) A requirement that the motion picture production company
12 shall commence work in this state on the identified motion picture
13 within 90 days of the date of the agreement or else the agreement
14 shall expire. However, upon request submitted by the motion picture
15 production company based on good cause, the Michigan film office
16 may extend the period for commencement of production for an
17 additional 90 days.

18 (b) A statement identifying the motion picture production
19 company and the motion picture that the company intends to produce
20 in whole or in part in this state.

21 (c) The maximum amount of the credit under this section
22 available to the motion picture production company for the motion
23 picture it plans to produce in whole or in part in this state.

24 (d) A unique number assigned to the motion picture production
25 project by the Michigan film office.

26 (e) A requirement that the motion picture not depict obscene
27 matter or an obscene performance.

1 (4) The film office and the state treasurer shall not enter
2 into an agreement with any motion picture production company
3 providing credits for more than 4 motion pictures for any 1 tax
4 year. In determining whether to enter into an agreement under this
5 section, the film office and the state treasurer shall consider all
6 of the following:

7 (a) The likelihood that in the absence of the credit the
8 filming will take place in a location other than this state.

9 (b) The extent to which the filming may have the effect of
10 promoting this state as a tourist destination.

11 (c) The motion picture production company's record in
12 completing commitments to engage in motion picture production.

13 (5) If the Michigan film office determines that a motion
14 picture production company has complied with the terms of an
15 agreement entered into under this section, the office shall issue a
16 postproduction certificate to that motion picture production
17 company. The motion picture production company shall submit a
18 request to the Michigan film office on a form prescribed by the
19 Michigan film office for a postproduction certificate, along with
20 any documentation the Michigan film office requires. The office
21 shall process each request within 60 days after it is complete.
22 However, the office may request additional information and
23 documentation before issuing a postproduction certificate of
24 completion and need not issue the postproduction certificate until
25 satisfied that production spending is adequately established. Each
26 postproduction certificate of completion shall be signed by the
27 Michigan film commissioner or his or her designee and shall include

1 the following information:

2 (a) The name of the motion picture production company.

3 (b) The name of the motion picture produced in whole or in
4 part in this state.

5 (c) The motion picture production company's production
6 spending for the motion picture and the amount of the tax credit
7 the company is entitled to claim under this section.

8 (d) The date of completion for the motion picture production
9 in this state.

10 (e) The unique number assigned to the motion picture
11 production project by the Michigan film office under subsection
12 (3).

13 (f) The motion picture production company's federal employer
14 identification number or Michigan treasury number.

15 (6) Information and records submitted by a motion picture
16 production company to the Michigan film office under this section
17 shall be considered confidential and exempt from disclosure under
18 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
19 to the extent that they describe the commercial and financial
20 operations of the company, they have not been publicly disseminated
21 at any time, and their disclosure might put the company at a
22 competitive disadvantage. A company submitting materials under this
23 section shall specifically designate any information and records
24 that the company deems confidential. The Michigan film office may
25 release any information and records submitted under this section
26 that have not been designated confidential by the company.

27 (7) A motion picture production company shall submit a

1 postproduction certificate of completion issued under subsection
2 (5) to the department of treasury. Subject to subsection (8), if
3 the credit allowed under this section exceeds the tax liability of
4 the motion picture production company for the tax year or if the
5 motion picture production company does not have a tax liability
6 under this act for the tax year, the department of treasury shall
7 refund the excess or pay the amount of the credit to that motion
8 picture production company.

9 (8) The total amount of tax credits available for all motion
10 picture production companies and their assignees under this section
11 shall not exceed \$7,000,000.00 for any 1 tax year.

12 (9) The state school aid fund established in section 11 of
13 article IX of the state constitution of 1963 and all local units of
14 government shall be held harmless for any credit or refund paid
15 under this section. Any credit or refund paid under this section
16 shall be paid from the general fund in the state treasury.

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

25 (a) A brief assessment of the overall effectiveness of the
26 credit under this section at attracting motion picture productions
27 to this state during the immediately preceding year.

1 (b) The number of motion picture productions requesting tax
2 credit approval during the immediately preceding year, the names of
3 the motion pictures produced in this state for which credits were
4 begun or completed in the immediately preceding year, and the
5 locations in this state that were used in the production of
6 approved motion pictures in the immediately preceding year.

7 (c) The amount of money spent by each motion picture
8 production company identified in subdivision (b) to produce the
9 motion pictures in this state and a breakdown of all production
10 spending by all companies classified as goods, services, or
11 salaries and wages.

12 (d) An estimate of the number of persons employed in this
13 state by motion picture production companies that qualify for the
14 credit under this section.

15 (e) The value of all tax credit certificates of completion
16 issued under this section.

17 (f) An estimate of the cost to the general fund resulting from
18 the tax credits claimed under this section and an estimate of
19 increased direct and indirect spending in this state due to motion
20 picture production.

21 (11) As used in this section:

22 (a) "Michigan film office" or "office" means the Michigan film
23 office housed within the **FORMER** department of history, arts, and
24 libraries before May 4, 2008, and housed within the Michigan
25 strategic fund after May 3, 2008.

26 (b) "Motion picture" means a feature-length film produced for
27 distribution in 2 or more states that is a production for which

1 records are not required to be maintained with respect to any
2 performer in the production under 18 USC 2257, or a television
3 series or a commercial or series of commercials made in this state
4 in whole or in part for theatrical or television viewing or as a
5 television pilot. Motion picture does not include the production of
6 any of the following:

7 (i) Televised news or current events programs.

8 (ii) Live sporting events.

9 (iii) Political advertising.

10 (iv) Radio programs.

11 (v) Weather shows.

12 (vi) Financial market reports.

13 (vii) Talk shows.

14 (viii) Game shows.

15 (ix) Product or service marketing.

16 (x) Awards shows or other events.

17 (c) "Motion picture production company" or "company" means an
18 entity in the business of producing motion pictures. However,
19 motion picture production company does not include an entity that
20 is more than 30% owned, affiliated, or controlled by an entity or
21 individual who is in default on a loan made by this state, a loan
22 guaranteed by this state, or a loan made or guaranteed by any other
23 state.

24 (d) "Obscene matter or an obscene performance" means matter
25 described in 1984 PA 343, MCL 752.361 to 752.374.

26 (e) "Production spending" means the following expenditures
27 made in this state to film or produce a single motion picture:

1 (i) Payments to vendors in this state to purchase tangible
2 personal property that is used in making the motion picture.

3 (ii) Payments to vendors doing business in this state for
4 services relating to motion picture production, editing, and
5 processing.

6 (iii) Payments and compensation, not to exceed \$100,000.00 for
7 any 1 employee, for contractual or salaried employees who are
8 residents of this state who perform services with respect to the
9 production.

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No.____ or House Bill No. 5423(request no.
12 01945'09) of the 95th Legislature is enacted into law.