

# HOUSE BILL No. 6285

June 23, 2010, Introduced by Reps. Agema, Genetski, Rick Jones, Rogers, Kowall, Denby, Meltzer, Knollenberg, Pearce, Bolger, Tyler, Lori, Young, Crawford, Proos, Amash, Paul Scott, McMillin, Haveman, Bledsoe and Meekhof and referred to the Committee on Tax Policy.

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

1 the 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 **OF COMPLETION** to the company. The  
20 company shall submit a request to the office for a postproduction  
21 certificate **OF COMPLETION** on a form prescribed by the office, along  
22 with any information or independent certification the office or the  
23 department deems necessary. The office shall process each request  
24 within 60 days after the request is complete. However, the office  
25 may request additional information or independent certification  
26 before issuing a postproduction certificate of completion and need  
27 not issue the postproduction certificate **OF COMPLETION** until

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

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

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

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

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

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

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

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

23 (6) Information, records, or other data received, prepared,  
24 used, or retained by the Michigan film office under this section  
25 that are submitted by an eligible production company ~~and considered~~  
26 ~~by the taxpayer and acknowledged by the office as confidential~~  
27 ~~shall not be subject to the disclosure requirements of the freedom~~

1 ~~of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,~~  
2 ~~records, or other data~~ shall only be considered confidential to the  
3 extent that the information or records describe the ~~commercial and~~  
4 ~~financial operations or~~ intellectual property of the company, the  
5 information or records have not been publicly disseminated at any  
6 time, and disclosure of the information or records may put the  
7 company at a competitive disadvantage.

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

17 (8) An eligible production company may assign all or a portion  
18 of a credit under this section to any assignee. An assignee may  
19 subsequently assign a credit or any portion of a credit assigned  
20 under this subsection to 1 or more assignees. A company may claim a  
21 portion of a credit and assign the remaining credit amount. A  
22 credit assignment under this subsection is irrevocable. The credit  
23 assignment under this subsection shall be made on a form prescribed  
24 by the department. The qualified taxpayer shall send a copy of the  
25 completed assignment form to the department in the tax year in  
26 which the assignment is made and shall attach a copy of the form to  
27 the return on which the credit is claimed.

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

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

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

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

23           (b) The number of qualified productions for which the eligible  
24 production company applied for a tax credit under this section  
25 during the immediately preceding year, the names of the qualified  
26 productions produced in this state for which credits were begun or  
27 completed in the immediately preceding year, and the locations in



1 this state that were used in the production of qualified  
2 productions in the immediately preceding calendar year.

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

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

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

15 (12) As used in this section:

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

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

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

27 (i) Payments to vendors doing business in this state to

1 purchase or use tangible personal property in producing or  
2 distributing the qualified production or to purchase services  
3 relating to the production or distribution of the qualified  
4 production, including all of the following:

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

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

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

24 (D) Catering, food, lodging, and related services and  
25 materials.

26 (E) Use of vehicles, which may include chartered aircraft  
27 based in this state used for transportation in this state directly

1 attributable to production of a qualified production, but may not  
2 include the chartering of aircraft for transportation outside of  
3 this state.

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

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

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

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

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

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

24 (ii) Payments and compensation, not to exceed \$2,000,000.00 for  
25 any 1 employee or contractual or salaried employee who performs  
26 services in this state for the production or distribution of a  
27 qualified production, including all of the following:

1 (A) Payment of wages, benefits, or fees for talent,  
2 management, or labor.

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

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

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

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

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

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

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

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

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

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

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

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

4 (ii) A production that includes obscene matter or an obscene  
5 performance.

6 (iii) A production that primarily consists of televised news or  
7 current events.

8 (iv) A production that primarily consists of a live sporting  
9 event.

10 (v) A production that primarily consists of political  
11 advertising.

12 (vi) A radio program.

13 (vii) A weather show.

14 (viii) A financial market report.

15 (ix) A talk show.

16 (x) A game show.

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

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

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

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

23 (l) "Sound recording" means a recording of music, poetry, or  
24 spoken-word performance, but does not include the audio portions  
25 spoken and recorded as part of a motion picture, video, theatrical  
26 production, television news coverage, or athletic event.

27 (m) "State certified qualified production" means a qualified

- 1 production for which a postproduction certificate **OF COMPLETION** has
- 2 been issued by the office under subsection (5).