

SENATE BILL No. 404

March 25, 2009, Introduced by Senators GILBERT, CASSIS, GEORGE and SWITALSKI and referred to the Committee on Finance.

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)~~-(8).

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~~ **SUBJECT TO THE LIMITATION PROVIDED IN SUBSECTION (6),**
16 **FOR** direct production expenditures or qualified personnel
17 expenditures made after February 29, 2008, an agreement under this
18 section may provide for an eligible production company to claim a
19 tax credit equal to ~~42%~~ **35%** of direct production expenditures for a
20 state certified qualified production ~~in a core community, 40% of~~
21 ~~direct production expenditures for a state certified qualified~~
22 ~~production in part of this state other than a core community, and~~
23 ~~30%~~ **35%** for qualified personnel expenditures. A taxpayer shall not
24 claim a credit under this section for any of the following:

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

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

1 for which the company claims a credit under section 367 of the
2 income tax act of 1967, 1967 PA 281, MCL 206.367.

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

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

1 agreement under this section, the agreement shall provide for all
2 of the following:

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

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

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

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

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

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

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

1 (H) A REQUIREMENT THAT AT LEAST 90% OF THE COMPANY'S EMPLOYEES
2 WHO PERFORM SERVICES RELATED TO THE PRODUCTION OR DISTRIBUTION OF A
3 QUALIFIED PRODUCTION ARE RESIDENTS OF THIS STATE.

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

7 (a) The potential that in the absence of the credit the
8 qualified production will be produced in a location other than this
9 state.

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

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

15 (d) The extent to which the credit will attract private
16 investment for the production of qualified productions in this
17 state.

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

20 (5) If the Michigan film office determines that an eligible
21 production company has complied with the terms of an agreement
22 entered into under this section, the office shall issue a
23 postproduction certificate **OF COMPLETION** to the company. The
24 company shall submit a request to the office for a postproduction
25 certificate **OF COMPLETION** on a form prescribed by the office, along
26 with any information or independent certification the office or the
27 department deems necessary. ~~The~~**EXCEPT AS OTHERWISE PROVIDED UNDER**

1 **SUBSECTION (6), THE** office shall process each request within 60
2 days after the request is complete. However, the office may request
3 additional information or independent certification before issuing
4 a postproduction certificate of completion and need not issue the
5 postproduction certificate **OF COMPLETION** until satisfied that
6 direct production expenditures, qualified personnel expenditures,
7 and eligibility are adequately established. The additional
8 information requested may include a report of direct production
9 expenditures and qualified personnel expenditures for the qualified
10 production audited and certified by an independent certified public
11 accountant. Each postproduction certificate of completion shall be
12 signed by the Michigan film commissioner and shall include the
13 following information:

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

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

17 (c) The eligible production company's direct production
18 expenditures and qualified personnel expenditures for the qualified
19 production.

20 (d) The date of completion for the qualified production in
21 this state.

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

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

26 (g) Any independent certification required by the department
27 or the Michigan film office.

1 (6) FOR THE 2009 CALENDAR YEAR AND EACH CALENDAR YEAR
2 THEREAFTER, THE CREDIT UNDER THIS SECTION SHALL NOT EXCEED
3 \$9,000,000.00 FOR ANY POSTPRODUCTION CERTIFICATE OF COMPLETION
4 ISSUED UNDER SUBSECTION (5). FOR THE 2009 CALENDAR YEAR AND EACH
5 CALENDAR YEAR THEREAFTER, THE TOTAL OF ALL CREDITS FOR ALL
6 POSTPRODUCTION CERTIFICATES OF COMPLETION ISSUED UNDER SUBSECTION
7 (5) DURING THE CALENDAR YEAR SHALL NOT EXCEED \$50,000,000.00. IF
8 THE TOTAL AMOUNT OF ALL CREDITS FOR WHICH POSTPRODUCTION
9 CERTIFICATES OF COMPLETION ARE REQUESTED IN ACCORDANCE WITH
10 SUBSECTION (5) IN 2009 EXCEEDS \$50,000,000.00, THE OFFICE NEED NOT
11 PROCESS THOSE REQUESTS AND ISSUE THOSE POSTPRODUCTION CERTIFICATES
12 OF COMPLETION THAT EXCEED \$50,000,000.00 UNTIL THE FIRST DAY OF THE
13 IMMEDIATELY SUCCEEDING TAX YEAR.

14 (7) ~~(6)~~—Information, records, or other data received,
15 prepared, used, or retained by the Michigan film office under this
16 section that are submitted by an eligible production company and
17 considered by the taxpayer and acknowledged by the office as
18 confidential shall not be subject to the disclosure requirements of
19 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
20 Information, records, or other data shall only be considered
21 confidential to the extent that the information or records describe
22 the commercial and financial operations or intellectual property of
23 the company, the information or records have not been publicly
24 disseminated at any time, and disclosure of the information or
25 records may put the company at a competitive disadvantage. NOT
26 LATER THAN THE FIFTEENTH OF EACH MONTH, THE MICHIGAN FILM OFFICE
27 SHALL MAKE AVAILABLE ON ITS WEBSITE A DETAILED MONTHLY REPORT THAT

1 INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

2 (A) THE NUMBER OF APPLICATIONS RECEIVED FOR A CREDIT UNDER
3 THIS SECTION IN THE IMMEDIATELY PRECEDING MONTH INCLUDING THE NAME
4 OF THE ELIGIBLE PRODUCTION COMPANY THAT SUBMITTED THE APPLICATION
5 AND A BRIEF DESCRIPTION OF THE PROPOSED QUALIFIED PRODUCTION
6 INCLUDING THE LOCATIONS IN THIS STATE TO BE USED IN THE PRODUCTION
7 AND THE PROPOSED AMOUNT OF MONEY TO BE EXPENDED BY THE ELIGIBLE
8 PRODUCTION COMPANY TO PRODUCE THE QUALIFIED PRODUCTION IN THIS
9 STATE.

10 (B) THE NUMBER OF APPLICATIONS APPROVED DURING THE IMMEDIATELY
11 PRECEDING MONTH.

12 (C) THE NUMBER OF POSTPRODUCTION CERTIFICATES OF COMPLETION
13 ISSUED DURING THE IMMEDIATELY PRECEDING MONTH.

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

23 (9) ~~(8)~~—An eligible production company may assign all or a
24 portion of a credit under this section to any assignee. An assignee
25 may subsequently assign a credit or any portion of a credit
26 assigned under this subsection to 1 or more assignees. A company
27 may claim a portion of a credit and assign the remaining credit

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

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

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

18 (12) ~~(11)~~—Not later than March 1 of each year after 2008, the
19 Michigan film office shall submit to the governor, the president of
20 the Michigan strategic fund, the chairperson of the senate finance
21 committee, and the house tax policy committee an annual report
22 concerning the operation and effectiveness of the credit under this
23 section. The requirements of section 28(1)(f) of 1941 PA 122, MCL
24 205.28, do not apply to disclosure of tax information required by
25 this subsection. The report shall include all of the following:

26 (a) A brief assessment of the overall effectiveness of the
27 credit under this section at attracting qualified productions to

1 this state during the immediately preceding calendar year.

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

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

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

18 (e) The value of all tax credit certificates of completion
19 issued under this section in the immediately preceding calendar
20 year.

21 **(13)** ~~(12)~~—As used in this section:

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

24 ~~—— (b) "Core community" means a qualified local governmental unit~~
25 ~~as defined under section 2 of the obsolete property rehabilitation~~
26 ~~act, 2000 PA 146, MCL 125.2782.~~

27 **(B)** ~~(e)~~—"Direct production expenditure" means a development,

1 preproduction, production, or postproduction expenditure made in
2 this state that is not a qualified personnel expenditure directly
3 attributable to the production or distribution of a qualified
4 production that is a transaction subject to taxation in this state,
5 including, but not limited to, all of the following:

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

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

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

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

3 (D) Catering, food, lodging, and related services and
4 materials.

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

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

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

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

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

24 (II) Purchase of equipment relating to the duplication or
25 market distribution of any content created or produced in this
26 state.

27 (I) Other expenditures for production of a qualified

1 production in accordance with generally accepted entertainment
2 industry practices.

3 (ii) Payments and compensation, not to exceed \$2,000,000.00 **IN**
4 **2008 AND \$1,000,000.00 IN 2009 AND EACH YEAR THEREAFTER** for any 1
5 employee or contractual or salaried employee who performs services
6 in this state for the production or distribution of a qualified
7 production, including all of the following:

8 (A) Payment of wages, benefits, or fees for talent,
9 management, or labor.

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

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

26 (D) ~~(e)~~—"Interactive website" means a website, the production
27 costs of which exceed \$500,000.00 in an annual period and primarily

1 includes interactive games, end user applications, animation,
2 simulation, sound, graphics, story lines, or video created or
3 repurposed for distribution over the internet. Interactive website
4 does not include a website primarily used for institutional,
5 private, industrial, retail, or wholesale marketing or promotional
6 purposes, or which contains obscene matter or an obscene
7 performance.

8 (E) ~~(f)~~—"Michigan film office" or "office" means the Michigan
9 film office created under chapter 2A of the Michigan strategic fund
10 act, 1984 PA 270, MCL 125.2029 to 125.2029g.

11 (F) ~~(g)~~—"Michigan film promotion fund" means the fund created
12 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,
13 MCL 125.2029 to 125.2029g.

14 (G) ~~(h)~~—"Obscene matter or an obscene performance" means
15 matter described in 1984 PA 343, MCL 752.361 to 752.374.

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

24 (I) ~~(j)~~—"Qualified personnel expenditure" means an expenditure
25 made in this state directly attributable to the production or
26 distribution of a qualified production that is a transaction
27 subject to taxation in this state and is a payment or compensation

1 payable to below the line crew for below the line crew members who
2 ~~were not~~**ARE** residents of this state for at least 60 days before
3 approval of the agreement for the qualified production under
4 subsection (3), not to exceed \$2,000,000.00 **IN 2008 AND \$250,000.00**
5 **IN 2009 AND EACH YEAR THEREAFTER** for any 1 employee or contractual
6 or salaried employee who performs service in this state for the
7 production of a qualified production, including both of the
8 following:

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

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

20 (J) ~~(K)~~ "State certified qualified production" or "qualified
21 production" means single media or multimedia entertainment content
22 created in whole or in part in this state for distribution or
23 exhibition to the general public in 2 or more states by any means
24 and media in any digital media format, film, or video tape,
25 including, but not limited to, a motion picture, a documentary, a
26 television series, a television miniseries, a television special,
27 interstitial television programming, long-form television,

1 interactive television, music videos, interactive games, video
2 games, ~~commercials,~~ internet programming, an internet video, a
3 sound recording, a video, digital animation, or an interactive
4 website. **QUALIFIED PRODUCTION ALSO INCLUDES A COMMERCIAL IF 100% OF**
5 **THE PRODUCTION OF THE COMMERCIAL TAKES PLACE IN THIS STATE.**

6 Qualified production also includes any trailer, pilot, video
7 teaser, or demo created primarily to stimulate the sale, marketing,
8 promotion, or exploitation of future investment in a production.

9 Qualified production does not include any of the following:

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

13 (ii) A production that includes obscene matter or an obscene
14 performance.

15 (iii) A production that primarily consists of televised news or
16 current events.

17 (iv) A production that primarily consists of a live sporting
18 event.

19 (v) A production that primarily consists of political
20 advertising.

21 (vi) A radio program.

22 (vii) A weather show.

23 (viii) A financial market report.

24 (ix) A talk show.

25 (x) A game show.

26 (xi) A production that primarily markets a product or service
27 other than a state certified qualified production. **THIS EXCLUSION**

1 DOES NOT INCLUDE A COMMERCIAL OTHERWISE ELIGIBLE AS A QUALIFIED
2 PRODUCTION UNDER THIS SUBDIVISION.

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

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

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

7 (K) ~~(I)~~—"Sound recording" means a recording of music, poetry,
8 or spoken-word performance, but does not include the audio portions
9 spoken and recorded as part of a motion picture, video, theatrical
10 production, television news coverage, or athletic event.

11 (I) ~~(m)~~—"State certified qualified production" means a
12 qualified production for which a postproduction certificate **OF**
13 **COMPLETION** has been issued by the office under subsection (5).