

SENATE BILL No. 405

March 25, 2009, Introduced by Senators CASSIS, GILBERT, 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 457 (MCL 208.1457), as added by 2008 PA 86.

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) Before January 1, 2009, invest and expend at least
9 \$100,000.00 for a qualified film and digital media infrastructure
10 project in this state; after December 31, 2008, invest and expend
11 at least ~~\$250,000.00~~ **\$500,000.00** for a qualified film and digital

1 media infrastructure project in this state.

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

3 (c) Receive an investment expenditure certificate from the
4 office under subsection (5).

5 (d) Submit the investment expenditure certificate issued by
6 the office under subsection (5) to the department under subsection
7 (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) For investment expenditures made by a taxpayer for all
12 qualified film and digital media infrastructure projects in this
13 state, an agreement under this section may provide for the taxpayer
14 to claim a tax credit equal to ~~25%~~30% of the taxpayer's base
15 investment. The credit under this section shall be reduced by any
16 credit claimed by the taxpayer under section 437 for the same base
17 investment. No more than \$20,000,000.00 in total credits under this
18 section shall be authorized in a tax year. If all or a portion of a
19 qualified film and digital media infrastructure project is a
20 facility that may be used for purposes unrelated to production or
21 postproduction activities, then the project is eligible for the
22 credit only if the department determines that the facility will
23 support and be necessary to secure production or postproduction
24 activity for the production and postproduction facility and the
25 taxpayer agrees to both of the following:

26 (a) The facility will be used as a state of the art production
27 or postproduction facility or as support and component of the

1 facility for the useful life of the facility.

2 (b) A credit will not be claimed under this section until the
3 facility is complete.

4 (3) A taxpayer seeking a credit under this section may submit
5 an application to enter into an agreement under this section to the
6 Michigan film office. The application shall be submitted in a form
7 prescribed by the Michigan film office and shall be accompanied by
8 a \$100.00 application fee and all of the information and records
9 requested by the office. An application fee received by the office
10 under this subsection shall be deposited in the Michigan film
11 promotion fund. The office shall not process the application until
12 it is complete. If the office, with the concurrence of the state
13 treasurer, determines to enter into an agreement under this
14 section, the agreement shall provide for all of the following:

15 (a) A requirement that construction on the qualified film and
16 digital media infrastructure project commence within 180 days of
17 the date of the agreement or else the agreement shall expire.
18 However, upon request submitted by the taxpayer based on good
19 cause, the office may extend the period for commencement of work
20 for up to an additional 90 days.

21 (b) A unique number assigned to the qualified film and digital
22 media infrastructure project.

23 (c) A detailed description of the qualified film and digital
24 media infrastructure project.

25 (d) A detailed business plan and market analysis for the
26 qualified film and digital media infrastructure project.

27 (e) A projected budget for the qualified film and digital

1 media infrastructure project.

2 (f) Estimated start date and completion date for the qualified
3 film and digital media infrastructure project.

4 (g) A requirement that the taxpayer not file a claim for the
5 credit under this section until at least 25% of the base investment
6 in the qualified film and digital media infrastructure project
7 identified in the agreement has been expended.

8 (h) A requirement that the taxpayer provide the office with
9 the information and independent certification the office and the
10 department deem necessary to verify investment expenditures and
11 eligibility for the credit under this section.

12 (i) A requirement that if the cost of tangible assets
13 described in subsection (11)(a) was paid or accrued in a tax year
14 beginning after December 31, 2007, the taxpayer shall repay an
15 amount equal to 25% of the gross proceeds or benefit derived from
16 the sale or other disposition of the tangible assets minus the
17 gain, multiplied by the apportionment factor for the taxable year
18 as prescribed in chapter 3, and plus the loss, multiplied by the
19 apportionment factor for the taxable year as prescribed in chapter
20 3 from the sale or other disposition reflected in federal taxable
21 income and minus the gain from the sale or other disposition added
22 to the business income tax base in section 201.

23 **(J) A REQUIREMENT THAT AT LEAST 90% OF THE TAXPAYER'S**
24 **EMPLOYEES WHO PERFORM SERVICES RELATED TO THE QUALIFIED FILM AND**
25 **DIGITAL MEDIA INFRASTRUCTURE PROJECT FOR WHICH THE CREDIT IS SOUGHT**
26 **UNDER THIS SECTION ARE RESIDENTS OF THIS STATE.**

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 film and digital media infrastructure project will be
5 constructed in a location other than this state.

6 (b) The extent to which the qualified film and digital media
7 infrastructure project may have the effect of promoting economic
8 development or job creation in this state.

9 (c) The extent to which the credit will attract private
10 investment for the production of motion pictures, videos,
11 television programs, and digital media in this state.

12 (d) The extent to which the credit will encourage the
13 development of film, video, television, and digital media
14 production and postproduction facilities in this state.

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

1 additional information requested may include a report of
2 expenditures audited and certified by an independent certified
3 public accountant. Each investment expenditure certificate shall be
4 signed by the Michigan film commissioner and shall include the
5 following information:

6 (a) The name of the taxpayer.

7 (b) A description of the qualified film and digital media
8 infrastructure project.

9 (c) The taxpayer's eligible investment expenditures for the
10 qualified film and digital media infrastructure project.

11 (d) The unique number assigned to the qualified film and
12 digital media infrastructure project by the office under subsection
13 (3).

14 (e) The taxpayer's federal employer identification number or
15 Michigan treasury number.

16 (f) Any independent certification required by the department
17 or the Michigan film office.

18 (6) Information, records, or other data received, prepared,
19 used, or retained by the Michigan film office under this section
20 that are submitted by an eligible production company and considered
21 by the taxpayer and acknowledged by the office as confidential
22 shall not be subject to the disclosure requirements of the freedom
23 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
24 records, or other data shall only be considered confidential to the
25 extent that the information or records describe the commercial and
26 financial operations or intellectual property of the company, the
27 information or records have not been publicly disseminated at any

1 time, and disclosure of the information or records may put the
2 company at a competitive disadvantage.

3 (7) To claim a credit under this section, a taxpayer shall
4 submit an investment expenditure certificate issued under
5 subsection (5) to the department. If the credit allowed under this
6 section exceeds the amount of taxes owed by the taxpayer under this
7 act for a tax year, that portion of the credit that exceeds the tax
8 liability of the taxpayer for the tax year shall not be refunded
9 but may be carried forward to offset tax liability under this act
10 in subsequent tax years for a period not to exceed 10 tax years or
11 until used up, whichever occurs first.

12 (8) The credit under this section shall be claimed after all
13 other credits under this act. A taxpayer eligible to claim a credit
14 under this section may assign all or a portion of a credit under
15 this section to any assignee. An assignee may subsequently assign a
16 credit or any portion of a credit assigned under this subsection to
17 1 or more assignees. A taxpayer may claim a portion of a credit and
18 assign the remaining credit amount. A credit assignment under this
19 subsection is irrevocable. The credit assignment under this
20 subsection shall be made on a form prescribed by the department. A
21 taxpayer claiming a credit under this section shall send a copy of
22 the completed assignment form to the department in the tax year in
23 which the assignment is made and shall attach a copy of the form to
24 the return on which the credit is claimed.

25 (9) The amount of the credit under this section shall be
26 reduced by a credit application and redemption fee equal to 0.5% of
27 the credit claimed, which shall be deducted from the credit

1 otherwise payable to the taxpayer claiming the credit and be
2 deposited by the department in the Michigan film promotion fund.

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

9 (11) As used in this section:

10 (a) "Base investment" means the cost, including fabrication
11 and installation, paid or accrued in the taxable year of tangible
12 assets of a type that are, or under the internal revenue code will
13 become, eligible for depreciation, amortization, or accelerated
14 capital cost recovery for federal income tax purposes, provided
15 that the assets are physically located in this state for use in a
16 business activity in this state and are not mobile tangible assets
17 expended by a person in the development of a qualified film and
18 digital media infrastructure project. Base investment does not
19 include a direct production expenditure or qualified personnel
20 expenditure eligible for a credit under section 455.

21 (b) "Michigan film office" or "office" means the Michigan film
22 office created under chapter 2A of the Michigan strategic fund act,
23 1984 PA 270, MCL 125.2029 to 125.2029g.

24 (c) "Michigan film promotion fund" means the fund created
25 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,
26 MCL 125.2029 to 125.2029g.

27 (d) "Qualified film and digital media infrastructure project"

1 means a film, video, television, or digital media production and
2 postproduction facility located in this state, movable and
3 immovable property and equipment related to the facility, and any
4 other facility that is a necessary component of the primary
5 facility. A qualified film and digital media infrastructure project
6 does not include a movie theater or other commercial exhibition
7 facility, a facility used to produce obscene matter or an obscene
8 performance as described in 1984 PA 343, MCL 752.361 to 752.374, or
9 a facility used for a production for which records are required to
10 be maintained with respect to any performer in the production under
11 18 USC 2257.