

SENATE BILL No. 796

September 9, 2009, Introduced by Senator CASSIS 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. To qualify for
8 the credit under this section, a company shall meet all of the
9 following requirements:

10 (a) Spend at least \$50,000.00 in this state for the

1 development, preproduction, production, or postproduction costs of
2 a state certified qualified production.

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

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

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

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

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

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

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

26 (c) A direct expenditure, or qualified personnel expenditure,
27 for which another taxpayer claims a credit under this section, a

1 credit under section 459, or a credit under section 367 of the
2 income tax act of 1967, 1967 PA 281, MCL 206.367.

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

26 (a) A requirement that the eligible production company
27 commence work in this state on the identified qualified production

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

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

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

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

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

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

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

24 **(H) BEGINNING OCTOBER 1, 2009, A STATEMENT IDENTIFYING ANY**
25 **OTHER STATE OR LOCAL ASSISTANCE BEING RECEIVED OR ANTICIPATED TO BE**
26 **RECEIVED BY THE COMPANY IN RELATION TO THE QUALIFIED PRODUCTION**
27 **THAT THE COMPANY INTENDS TO PRODUCE IN THIS STATE.**

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

4 (a) The potential that in the absence of the credit the
5 qualified production will be produced in a location other than this
6 state.

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

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

12 (d) The extent to which the credit will attract private
13 investment for the production of qualified productions in this
14 state.

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

17 (5) If the Michigan film office determines that an eligible
18 production company has complied with the terms of an agreement
19 entered into under this section, the office shall issue a
20 postproduction certificate **OF COMPLETION** to the company. The
21 company shall submit a request to the office for a postproduction
22 certificate **OF COMPLETION** on a form prescribed by the office, along
23 with any information or independent certification the office or the
24 department deems necessary. The office shall process each request
25 within 60 days after the request is complete. However, the office
26 may request additional information or independent certification
27 before issuing a postproduction certificate of completion and need

1 not issue the postproduction certificate **OF COMPLETION** until
2 satisfied that direct production expenditures, qualified personnel
3 expenditures, and eligibility are adequately established. The
4 additional information requested may include a report of direct
5 production expenditures and qualified personnel expenditures for
6 the qualified production audited and certified by an independent
7 certified public accountant. Each postproduction certificate of
8 completion shall be signed by the Michigan film commissioner and
9 shall include the following information:

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

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

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

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

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

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

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

24 ~~Information, records, or other data received, prepared,~~
25 ~~used, or retained by the Michigan film office under this section~~
26 ~~that are submitted by an eligible production company and considered~~
27 ~~by the taxpayer and acknowledged by the office as confidential~~

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

(6) THE MICHIGAN FILM OFFICE SHALL, ON JANUARY 1, APRIL 1, JULY 1, AND OCTOBER 1 IN EACH YEAR, MAKE AVAILABLE ON ITS WEBSITE A DETAILED QUARTERLY REPORT THAT INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING:

(A) THE NUMBER OF APPLICATIONS RECEIVED FOR A CREDIT UNDER THIS SECTION IN THE IMMEDIATELY PRECEDING QUARTER AND THE CUMULATIVE TOTAL AMOUNT FOR THAT YEAR, INCLUDING THE NAME OF THE ELIGIBLE PRODUCTION COMPANY THAT SUBMITTED THE APPLICATION AND A BRIEF DESCRIPTION OF THE PROPOSED QUALIFIED PRODUCTION, INCLUDING THE LOCATIONS IN THIS STATE TO BE USED IN THE PRODUCTION AND THE PROPOSED AMOUNT OF MONEY TO BE EXPENDED BY THE ELIGIBLE PRODUCTION COMPANY TO PRODUCE THE QUALIFIED PRODUCTION IN THIS STATE.

(B) THE NUMBER OF APPLICATIONS APPROVED DURING THE IMMEDIATELY PRECEDING QUARTER AND THE CUMULATIVE TOTAL FOR THAT SAME YEAR.

(C) THE NUMBER OF POSTPRODUCTION CERTIFICATES OF COMPLETION ISSUED DURING THE IMMEDIATELY PRECEDING QUARTER AND THE CUMULATIVE TOTAL FOR THAT SAME YEAR.

(D) THE ACTUAL AMOUNT OF REFUNDABLE CREDITS ALLOWED UNDER THIS SECTION DURING THE IMMEDIATELY PRECEDING QUARTER AND THE CUMULATIVE

1 **TOTAL AMOUNT ALLOWED FOR THE SAME TAX YEAR.**

2 (7) An eligible production company shall submit a
3 postproduction certificate of completion issued under subsection
4 (5) to the department. **THE DEPARTMENT SHALL FORWARD A COPY OF EACH**
5 **POSTPRODUCTION CERTIFICATE OF COMPLETION RECEIVED PURSUANT TO THIS**
6 **SUBSECTION TO THE GOVERNOR, THE PRESIDENT OF THE MICHIGAN STRATEGIC**
7 **FUND, THE CHAIRPERSON OF THE SENATE FINANCE COMMITTEE, AND THE**
8 **CHAIRPERSON OF THE HOUSE TAX POLICY COMMITTEE.** If the credit
9 allowed under this section exceeds the tax liability of the company
10 for the tax year or if the company claiming the credit does not
11 have a tax liability under this act for the tax year, the
12 department shall refund the excess or pay the amount of the credit
13 to the company. The credit under this section shall be claimed
14 after all other credits under this act.

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

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

1 the credit claimed, which shall be deducted from the credit
2 otherwise payable to the taxpayer claiming the credit and be
3 deposited by the department in the Michigan film promotion fund.

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

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

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

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

1 productions in the immediately preceding calendar year.

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

7 (d) ~~An estimate of the~~ **THE** number of persons employed in this
8 state by eligible production companies that qualified for the
9 credit under this section in the immediately preceding calendar
10 year **AND A BREAKDOWN OF THOSE JOBS CLASSIFIED AS FULL-TIME OR PART-**
11 **TIME AND HOW MANY OF THOSE PERSONS EMPLOYED WERE RESIDENTS OF THIS**
12 **STATE.**

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

16 **(F) THE AMOUNT OF OTHER STATE AND LOCAL ASSISTANCE PROVIDED TO**
17 **ELIGIBLE PRODUCTION COMPANIES IN ADDITION TO THE TAX CREDIT UNDER**
18 **THIS SECTION.**

19 (12) As used in this section:

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

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

25 (c) "Direct production expenditure" means a development,
26 preproduction, production, or postproduction expenditure made in
27 this state that is not a qualified personnel expenditure directly

1 attributable to the production or distribution of a qualified
2 production that is a transaction subject to taxation in this state,
3 including, but not limited to, all of the following:

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

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

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

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

1 (D) Catering, food, lodging, and related services and
2 materials.

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

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

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

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

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

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

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

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

5 (A) Payment of wages, benefits, or fees for talent,
6 management, or labor.

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

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

23 (e) "Interactive website" means a website, the production
24 costs of which exceed \$500,000.00 in an annual period and primarily
25 includes interactive games, end user applications, animation,
26 simulation, sound, graphics, story lines, or video created or
27 repurposed for distribution over the internet. Interactive website

1 does not include a website primarily used for institutional,
2 private, industrial, retail, or wholesale marketing or promotional
3 purposes, or which contains obscene matter or an obscene
4 performance.

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

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

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

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

21 (j) "Qualified personnel expenditure" means an expenditure
22 made in this state directly attributable to the production or
23 distribution of a qualified production that is a transaction
24 subject to taxation in this state and is a payment or compensation
25 payable to below the line crew for below the line crew members who
26 were not residents of this state for at least 60 days before
27 approval of the agreement for the qualified production under

1 subsection (3), not to exceed \$2,000,000.00 for any 1 employee or
2 contractual or salaried employee who performs service in this state
3 for the production of a qualified production, including both of the
4 following:

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

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

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

1 video teaser, or demo created primarily to stimulate the sale,
2 marketing, promotion, or exploitation of future investment in a
3 production. Qualified production does not include any of the
4 following:

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

8 (ii) A production that includes obscene matter or an obscene
9 performance.

10 (iii) A production that primarily consists of televised news or
11 current events.

12 (iv) A production that primarily consists of a live sporting
13 event.

14 (v) A production that primarily consists of political
15 advertising.

16 (vi) A radio program.

17 (vii) A weather show.

18 (viii) A financial market report.

19 (ix) A talk show.

20 (x) A game show.

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

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

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

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

27 (l) "Sound recording" means a recording of music, poetry, or

1 spoken-word performance, but does not include the audio portions
2 spoken and recorded as part of a motion picture, video, theatrical
3 production, television news coverage, or athletic event.

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