

SENATE BILL No. 1405

June 24, 2010, Introduced by Senators CASSIS, JANSEN, BISHOP, HARDIMAN, GEORGE and GILBERT 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

1 project in this state; after December 31, 2008, invest and expend
2 at least \$250,000.00 for a qualified film and digital media
3 infrastructure project in this state.

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

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

7 (d) Submit the investment expenditure certificate issued by
8 the office under subsection (5) to the department under subsection
9 (7).

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

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

1 (a) The facility will be used as a state of the art production
2 or postproduction facility or as support and component of the
3 facility for the useful life of the facility.

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

6 (3) A taxpayer seeking a credit under this section may submit
7 an application to enter into an agreement under this section to the
8 Michigan film office. The application shall be submitted in a form
9 prescribed by the Michigan film office and shall be accompanied by
10 a \$100.00 application fee and all of the information and records
11 requested by the office. An application fee received by the office
12 under this subsection shall be deposited in the Michigan film
13 promotion fund. The office shall not process the application until
14 it is complete. **THE OFFICE SHALL, AS SOON AS THE APPLICATION IS**
15 **COMPLETE, FORWARD A COPY OF THE APPLICATION AND ALL OF THE**
16 **INFORMATION AND RECORDS INCLUDED WITH THE APPLICATION TO THE**
17 **GOVERNOR, THE PRESIDENT OF THE MICHIGAN STRATEGIC FUND, THE**
18 **CHAIRPERSON OF THE SENATE FINANCE COMMITTEE, THE CHAIRPERSON OF THE**
19 **HOUSE TAX POLICY COMMITTEE, THE DIRECTOR OF THE SENATE FISCAL**
20 **AGENCY, AND THE DIRECTOR OF THE HOUSE FISCAL AGENCY.** If the office,
21 with the concurrence of the state treasurer, determines to enter
22 into an agreement under this section, the agreement shall provide
23 for all of the following:

24 (a) A requirement that construction on the qualified film and
25 digital media infrastructure project commence within 180 days of
26 the date of the agreement or else the agreement shall expire.
27 However, upon request submitted by the taxpayer based on good

1 cause, the office may extend the period for commencement of work
2 for up to an additional 90 days.

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

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

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

9 (e) A projected budget for the qualified film and digital
10 media infrastructure project.

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

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

17 (h) A requirement that the taxpayer provide the office with
18 the information and independent certification the office and the
19 department deem necessary to verify investment expenditures and
20 eligibility for the credit under this section.

21 (i) A requirement that if the cost of tangible assets
22 described in subsection (11)(a) was paid or accrued in a tax year
23 beginning after December 31, 2007, the taxpayer shall repay an
24 amount equal to 25% of the gross proceeds or benefit derived from
25 the sale or other disposition of the tangible assets minus the
26 gain, multiplied by the apportionment factor for the taxable year
27 as prescribed in chapter 3, and plus the loss, multiplied by the

1 apportionment factor for the taxable year as prescribed in chapter
2 3 from the sale or other disposition reflected in federal taxable
3 income and minus the gain from the sale or other disposition added
4 to the business income tax base in section 201.

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

8 (a) The potential that in the absence of the credit the
9 qualified film and digital media infrastructure project will be
10 constructed in a location other than this state.

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

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

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

20 (5) If the Michigan film office determines that a taxpayer has
21 complied with the terms of an agreement entered into under this
22 section, the office shall issue an investment expenditure
23 certificate to the taxpayer. The taxpayer shall submit a request to
24 the office for an investment expenditure certificate on a form
25 prescribed by the office, along with any information or independent
26 certification the office or the department deems necessary. The
27 office shall process each request within 60 days after the request

1 is complete. However, the office may request additional information
2 or independent certification before issuing an investment
3 expenditure certificate and need not issue the investment
4 expenditure certificate until satisfied that investment
5 expenditures and eligibility are adequately established. The
6 additional information requested may include a report of
7 expenditures audited and certified by an independent certified
8 public accountant. Each investment expenditure certificate shall be
9 signed by the Michigan film commissioner and shall include the
10 following information:

11 (a) The name of the taxpayer.

12 (b) A description of the qualified film and digital media
13 infrastructure project.

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

16 (d) The unique number assigned to the qualified film and
17 digital media infrastructure project by the office under subsection
18 (3).

19 (e) The taxpayer's federal employer identification number or
20 Michigan treasury number.

21 (f) 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. **FOR PURPOSES OF THIS**
8 **SUBSECTION, INFORMATION OR RECORDS THAT DESCRIBE COMMERCIAL AND**
9 **FINANCIAL OPERATIONS DO NOT INCLUDE INFORMATION OR RECORDS THAT**
10 **INCLUDE ANY EXPENSES THAT QUALIFY UNDER THIS SECTION AS INVESTMENT**
11 **EXPENDITURES IN A QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE**
12 **PROJECT AND FOR WHICH A CREDIT MAY BE CLAIMED.**

13 (7) To claim a credit under this section, a taxpayer shall
14 submit an investment expenditure certificate issued under
15 subsection (5) to the department. **THE DEPARTMENT SHALL FORWARD A**
16 **COPY OF EACH INVESTMENT EXPENDITURE CERTIFICATE RECEIVED PURSUANT**
17 **TO THIS SUBSECTION AND A COPY OF THE CORRESPONDING AGREEMENT**
18 **DESCRIBED UNDER SUBSECTION (3) TO THE GOVERNOR, THE PRESIDENT OF**
19 **THE MICHIGAN STRATEGIC FUND, THE CHAIRPERSON OF THE SENATE FINANCE**
20 **COMMITTEE, THE CHAIRPERSON OF THE HOUSE TAX POLICY COMMITTEE, THE**
21 **DIRECTOR OF THE SENATE FISCAL AGENCY, AND THE DIRECTOR OF THE HOUSE**
22 **FISCAL AGENCY.** If the credit allowed under this section exceeds the
23 amount of taxes owed by the taxpayer under this act for a tax year,
24 that portion of the credit that exceeds the tax liability of the
25 taxpayer for the tax year shall not be refunded but may be carried
26 forward to offset tax liability under this act in subsequent tax
27 years for a period not to exceed 10 tax years or until used up,

1 whichever occurs first.

2 (8) The credit under this section shall be claimed after all
3 other credits under this act. A taxpayer eligible to claim a credit
4 under this section may assign all or a portion of a credit under
5 this section to any assignee. An assignee may subsequently assign a
6 credit or any portion of a credit assigned under this subsection to
7 1 or more assignees. A taxpayer may claim a portion of a credit and
8 assign the remaining credit amount. A credit assignment under this
9 subsection is irrevocable. The credit assignment under this
10 subsection shall be made on a form prescribed by the department. A
11 taxpayer claiming a credit under this section shall send a copy of
12 the completed assignment form to the department in the tax year in
13 which the assignment is made and shall attach a copy of the form to
14 the return on which the credit is claimed.

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

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

26 (11) As used in this section:

27 (a) "Base investment" means the cost, including fabrication

1 and installation, paid or accrued in the taxable year of tangible
2 assets of a type that are, or under the internal revenue code will
3 become, eligible for depreciation, amortization, or accelerated
4 capital cost recovery for federal income tax purposes, provided
5 that the assets are physically located in this state for use in a
6 business activity in this state and are not mobile tangible assets
7 expended by a person in the development of a qualified film and
8 digital media infrastructure project. Base investment does not
9 include a direct production expenditure or qualified personnel
10 expenditure eligible for a credit under section 455.

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

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

17 (d) "Qualified film and digital media infrastructure project"
18 means a film, video, television, or digital media production and
19 postproduction facility located in this state, movable and
20 immovable property and equipment related to the facility, and any
21 other facility that is a necessary component of the primary
22 facility. A qualified film and digital media infrastructure project
23 does not include a movie theater or other commercial exhibition
24 facility, a facility used to produce obscene matter or an obscene
25 performance as described in 1984 PA 343, MCL 752.361 to 752.374, or
26 a facility used for a production for which records are required to
27 be maintained with respect to any performer in the production under

1 18 USC 2257.