SENATE BILL No. 1571

November 4, 2010, Introduced by Senators CASSIS, SWITALSKI, 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 455 (MCL 208.1455), as added by 2008 PA 77.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 455. (1) ~~The~~ **THROUGH SEPTEMBER 30, 2012 AND SUBJECT TO THE LIMITATIONS UNDER SUBSECTION (12), THE** Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with an eligible production company providing the company with a credit against the tax imposed by this act or against taxes withheld under chapter 7 of the income tax act of 1967, 1967 PA 281, MCL 206.351 to 206.367, as provided under this section and section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367. To qualify for the credit under this section, a company shall meet all of the following requirements:

SENATE BILL No. 1571

(a) Spend at least $50,000.00 in this state for the development, preproduction, production, or postproduction costs of a state certified qualified production.

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

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

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

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

(2) For direct production expenditures or qualified personnel expenditures made after February 29, 2008 **AND BEFORE JANUARY 1, 2011**, an agreement under this section may provide for an eligible production company to claim a tax credit equal to 42% of direct production expenditures for a state certified qualified production in a core community, 40% of direct production expenditures for a state certified qualified production in part of this state other than a core community, and 30% for qualified personnel expenditures. **SUBJECT TO THE LIMITATIONS UNDER SUBSECTION (12), FOR DIRECT PRODUCTION EXPENDITURES OR QUALIFIED PERSONNEL EXPENDITURES MADE AFTER DECEMBER 31, 2010 AND BEFORE JANUARY 1, 2012, AN AGREEMENT UNDER THIS SECTION MAY PROVIDE FOR AN ELIGIBLE PRODUCTION COMPANY TO CLAIM A TAX CREDIT EQUAL TO 28% OF DIRECT PRODUCTION EXPENDITURES FOR A STATE CERTIFIED QUALIFIED PRODUCTION IN A CORE COMMUNITY, 26% OF DIRECT PRODUCTION EXPENDITURES FOR A STATE**

CERTIFIED QUALIFIED PRODUCTION IN PART OF THIS STATE OTHER THAN A CORE COMMUNITY, AND 10% FOR QUALIFIED PERSONNEL EXPENDITURES. SUBJECT TO THE LIMITATIONS UNDER SUBSECTION (12), FOR DIRECT PRODUCTION EXPENDITURES OR QUALIFIED PERSONNEL EXPENDITURES MADE AFTER DECEMBER 31, 2011 AND BEFORE JANUARY 1, 2013, AN AGREEMENT UNDER THIS SECTION MAY PROVIDE FOR AN ELIGIBLE PRODUCTION COMPANY TO CLAIM A TAX CREDIT EQUAL TO 14% OF DIRECT PRODUCTION EXPENDITURES FOR A STATE CERTIFIED QUALIFIED PRODUCTION IN A CORE COMMUNITY, 13% OF DIRECT PRODUCTION EXPENDITURES FOR A STATE CERTIFIED QUALIFIED PRODUCTION IN PART OF THIS STATE OTHER THAN A CORE COMMUNITY, AND 5% FOR QUALIFIED PERSONNEL EXPENDITURES. A taxpayer shall not claim a credit under this section for any of the following:

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

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

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

(3) An eligible production company intending to produce a qualified production in this state, or that initiated production of a qualified production after February 29, 2008 and before ~~the effective date of the amendatory act that added this section,~~ **APRIL 8, 2008,** may submit an application to enter into an agreement under

this section to the Michigan film office. Except for a qualified production for which production was initiated after February 29, 2008 and before ~~the effective date of the amendatory act that added this section,~~ **APRIL 8, 2008,** direct production expenditures and qualified personnel expenditures incurred prior to approval of an agreement under this section are not eligible for the credit under this section. The request shall be submitted in a form prescribed by the Michigan film office and shall be accompanied by a $100.00 application fee and all of the information and records requested by the office. An application fee received by the office under this subsection shall be deposited in the Michigan film promotion fund. The office shall not process the application until it is complete. As part of the application, the company shall estimate direct production expenditures and qualified personnel expenditures for an identified qualified production. If the office, with the concurrence of the state treasurer, determines to enter into an agreement under this section, the agreement shall provide for all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) If the Michigan film office determines that an eligible production company has complied with the terms of an agreement entered into under this section, the office shall issue a postproduction certificate **OF COMPLETION** to the company. The company shall submit a request to the office for a postproduction certificate **OF COMPLETION** on a form prescribed by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing a postproduction certificate of completion and need not issue the postproduction certificate **OF COMPLETION** until satisfied that direct production expenditures, qualified personnel expenditures, and eligibility are adequately established. The additional information requested may include a report of direct production expenditures and qualified personnel expenditures for the qualified production audited and certified by an independent certified public accountant. Each postproduction certificate of completion shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the eligible production company.

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

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

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

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

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

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

(6) Information, records, or other data received, prepared, used, or retained by the Michigan film office under this section that are submitted by an eligible production company and considered 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.

(7) An eligible production company shall submit a postproduction certificate of completion issued under subsection (5) to the department. If the credit allowed under this section

exceeds the tax liability of the company for the tax year or if the company claiming the credit does not have a tax liability under this act for the tax year, the department shall refund the excess or pay the amount of the credit to the company. The credit under this section shall be claimed after all other credits under this act.

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

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

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

deposited in the Michigan film promotion fund.

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

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

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

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

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

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

(12) FOR THE 2011 CALENDAR YEAR, THE TOTAL OF ALL POSTPRODUCTION CERTIFICATES OF COMPLETION ISSUED UNDER SUBSECTION (5) SHALL NOT EXCEED $80,000,000.00. FOR THE 2012 CALENDAR YEAR, THE TOTAL OF ALL POSTPRODUCTION CERTIFICATES OF COMPLETION ISSUED UNDER SUBSECTION (5) SHALL NOT EXCEED $40,000,000.00.

(13) ~~(12)~~ As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(*vi*) A radio program.

(*vii*) A weather show.

(*viii*) A financial market report.

(*ix*) A talk show.

(*x*) A game show.

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

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

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

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

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

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