HOUSE BILL NO. 4908

July 18, 2023, Introduced by Reps. Roth, Rheingans, Conlin, Schuette, Tyrone Carter, Hoskins, McFall, Martus, Glanville, Schmaltz, Morgan, Bierlein, Stone, Arbit, Churches, Hood, Rogers, Wilson, Coleman, Young, Grant, McKinney, Mentzer, Puri, Wozniak and Tsernoglou and referred to the Committee on Economic Development and Small Business.

A bill to amend 1967 PA 281, entitled

"Income tax act of 1967,"

by amending sections 701 and 703 (MCL 206.701 and 206.703), section 701 as amended by 2022 PA 148 and section 703 as amended by 2016 PA 158, and by adding sections 285 and 677.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 285. (1) As used in this section and section 677:

(a) "Accredited production certificate" or "APC" means the approval certificate issued by the office certifying that the production proposed in the application is a qualified production.

(b) "Agreed-upon procedures" means the instructions and procedures provided by the office to be performed by a certified public accountant for the determination and attestation of the amount of qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures of a qualified production.

(c) "Applicant" means a taxpayer that is engaged in the business of producing qualified productions and owns the copyright to the qualified production during the production period or that is authorized by, or has a contract with, another entity or copyright holder that is engaged in the business of producing qualified productions. Applicant 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.

(d) "Approved logos" means "Filmed in Michigan", "Pure Michigan", "Michigan Film Industry Association", and "Michigan Film & Digital Media Office" logos approved by the office.

(e) "Certified public accountant" means an individual licensed as a certified public accountant under article 7 of the occupational code, 1980 PA 299, MCL 339.720 to 339.736.

(f) "Commence work" means the date on which filming, taping, photographing, or any other form of digital capturing for the qualified production begins, including any preparation activity necessary to start filming, taping, photographing, or capturing digitally. For purposes of an animated production, the commence work date is the date the artwork that is to be used in actual frames of the qualified production begins.

(g) "Commercial domicile" means a physical place from which

the trade or business of the person is directed or managed.

(h) "Economic impact data" means data related to the types of jobs created and retained in this state by the applicant during the qualified production and the amount spent to produce the qualified production in this state during the production period. The economic impact data must be broken down as follows:

(*i*) Number of entry-level positions.

(*ii*) Number of management-related positions.

(*iii*) Number of talent positions.

(*iv*) Number of production staff and crew.

(*v*) Number of qualified Michigan vendor-related positions.

(*vi*) Number of workday hires.

(*vii*) Number of postproduction, including visual effects, vendor-related positions.

(*viii*) The amount of qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures attributable to labor and vendors, respectively.

(*ix*) The amount of any other expenditures incurred for the qualified production.

(i) "Entry-level position" means the lowest level of a hierarchy in a production, including untrained or unskilled employees.

(j) "Full-time employee" means a job performed for 35 hours or more each week by an individual.

(k) "Independent contractor" means an individual who is self-employed and whose earnings for services are subject to self-employment tax and the payer of the services has the right only to control or direct the result of the work, not what will be done or

how it will be done.

(*l*) "Inventory" means the stock of goods held for resale in the ordinary course of trade of a business. Inventory includes personal property under lease or principally intended for lease rather than sale or property allowed a deduction or allowance for depreciation or depletion under the internal revenue code.

(m) "Loan out company" means a personal service corporation or other entity that is contracted with by the applicant to provide specified individual personnel, such as artists, crew actors, producers, or directors, for the performance of services directly in a qualified production. Loan out company does not include an entity contracted with by the applicant to provide goods or ancillary services for a qualified production such as catering, construction, trailers, equipment, or transportation.

(n) "Location fees" means a payment made to an individual or entity for the use of property that is located in this state and subject to the levy of tax under the general property tax act, 1893 PA 206, MCL 211.1 to 211.155.

(o) "Michigan film and digital media office" or "office" means the office created under section 29a of the Michigan strategic fund act, 1984 PA 270, MCL 125.2029a.

(p) "Michigan film promotion fund" means the fund created under section 29d of the Michigan strategic fund act, 1984 PA 270, MCL 125.2029d.

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

(r) "Personal service corporation" means that term as defined under section 269A of the internal revenue code and includes any other entity, including a sole proprietorship or independent

contractor, that meets the principal activity and ownership requirements established for a personal service corporation under section 269A(b) of the internal revenue code.

(s) "Production period" means the time period between the greenlighting of a qualified production and the completion of the qualified production. Production period includes the preproduction, production, and postproduction time frames, but does not include the time to develop or acquire rights to produce the qualified production or the time to market, promote, or distribute the qualified production. As used in this subdivision:

(*i*) "Greenlighting" means the moment at which a studio or producer approves a project to move forward into preproduction and commits to the budgeting process.

(*ii*) "Postproduction" means the phase of production that follows production in which raw footage is edited and assembled into a finished product with sound synchronization, visual effects, color correction, and other miscellaneous edits.

(*iii*) "Preproduction" means the phase of production that precedes the bulk of the actual filming of the project.

(*iv*) "Production" means the phase of production in which the bulk of the filming takes place.

(t) "Production staff and crew" means office, production, and postproduction staff, including, but not limited to, accountants, coordinators, secretaries, casting agents, talent agents, model agents, and any other individual involved with cameras, casting, construction, costume, electric, editing, grip, location, hair, makeup, props, swing gang, set decorating, sound, special effects, transportation, and visual effects related to the qualified production.

(u) "Qualified Michigan vendor" means a business that satisfies each of the following:

(*i*) Has commercial domicile in this state or is incorporated or registered to do business in this state, prior to commencing work on the qualified production.

(*ii*) Has at least 1 physical location in this state and has been doing business for at least 6 months before the date of the APC.

(*iii*) For a vendor engaged in the business of selling or renting equipment, maintains inventory in this state on a continuous basis and has at least 1 full-time employee in this state.

(*iv*) Is subject to the levy of taxes under this act, the general property tax act, 1893 PA 206, MCL 211.1 to 211.155, and the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78.

(v) "Qualified personnel expenditure" means any payments and compensation up to $500,000.00 for each employee or contractual or salaried employee, per qualified production project, who performs services in this state directly attributable to the qualified production, including all of the following:

(*i*) Payment of wages subject to the withholding requirements of this act.

(*ii*) Payment to a loan out company if the loan out company has complied with the withholding requirements of this act for each employee who performs services in this state directly attributable to the qualified production.

(w) "Qualified probationary Michigan vendor" means a Michigan vendor that satisfies each of the requirements to be a qualified Michigan vendor except that the vendor has only been doing business in this state for less than 6 months before the date of the APC and

if that vendor is engaged in the business of selling or renting equipment does not have at least 1 full-time employee in this state.

(x) "Qualified probationary Michigan vendor expenditure" means a production expenditure made in this state to a qualified probationary Michigan vendor that would have been a qualified production expenditure if the qualified probationary Michigan vendor was a qualified Michigan vendor.

(y) "Qualified production" means single media or multimedia content created in whole or in part in this state for distribution or exhibition by any means and media in any digital media format, film, or videotape, 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, advertising commercials, commercial photography, industrials, short films, web-based content, an internet video, a video, motion capture, or animation. 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*) An awards show or other gala event production.

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

(*xiii*) A nonscripted reality production that is not a commercial.

(z) "Qualified production expenditure" means an expenditure made during the production period in this state to a qualified Michigan vendor that is directly attributable to the qualified production and that is a transaction subject to taxation in this state. Qualified production expenditure does not include any pass-through transactions or purchases made from a qualified Michigan vendor for any goods or services that are not within the ordinary course of business of that qualified Michigan vendor. Qualified production expenditures paid to a qualified Michigan vendor include, but are not limited to, the purchase, lease, or use of tangible personal property in this state during the production period of the qualified production or to acquire services performed in this state that are directly attributable to the qualified production. Qualified production expenditure does not include the purchase of tangible assets if those assets retain residual value or are not fully consumed by the qualified production during the

production period. Qualified production expenditure does not include an expenditure related to the acquisition or licensing of content used in the qualified production. Qualified production expenditure does include, but is not limited to, all of the following:

(*i*) Rental or use of facilities or equipment, use of soundstages or studios, location fees, and related services and materials to the extent those tangible assets are used in this state for the qualified production.

(*ii*) 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. For purposes of this subparagraph, use of vehicles and chartered aircraft includes fuel costs incurred in this state, and costs attributable to chartered aircraft are limited to 2 roundtrip fares per individual, per qualified production.

(*iii*) Commercial airfare for domestic travel to and from this state or within this state directly attributable to production or distribution of a qualified production. In calculating expenditures under this subparagraph, commercial airfare expenditures are limited to 2 roundtrip fares per individual, per qualified production.

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

(*v*) Postproduction costs directly related to the qualified production during the production period for, but not limited to, animation, dailies, digital intermediate color grading, editing, Foley recording, automatic dialogue replacement, sound recording,

sound editing and mixing, special or visual effects including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative processing and cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects.

(*vi*) Stock footage or stock music.

(aa) "Resident" means an individual who is domiciled in this state and has an operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, an enhanced driver license issued under the enhanced driver license and enhanced official state personal identification card act, 2008 PA 23, MCL 28.301 to 28.308, an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, or an enhanced official state personal identification card issued under the enhanced driver license and enhanced official state personal identification card act, 2008 PA 23, MCL 28.301 to 28.308. As used in this subdivision, "domicile" means a place where an individual has the individual's true, fixed, and permanent home and principal establishment, to which, whenever absent therefrom, the individual intends to return, and domicile continues until another permanent establishment is established.

(bb) "State-certified qualified production" means a qualified production for which a tax credit certificate has been issued by the office under this section or section 677.

(cc) "Talent-related positions" means individuals with any speaking, background, or extra roles that appear on-screen or off-screen.

(dd) "Tax credit certificate" or "TCC" means the certificate issued by the office under subsection (8) upon completion of a

qualified production.

(ee) "Vendor-related positions" means jobs obtained or created through a contractor or subcontractor, including, but not limited to, security, janitorial, printing, florist, dry cleaners, and limousine services.

(ff) "Wages" means all compensation paid for services rendered by an employee that are attributable to a qualified production. Compensation includes health, life, and disability insurance premiums, payments under the federal insurance contributions act, 26 USC 3101 to 3134, retirement or pension contributions, vacation and sick leave pay, and any per diem amounts paid to an employee for meals or lodging if those payments are subject to withholding under section 703.

(gg) "Workday hire" means an individual hired to work a single day.

(2) Subject to the limitations under this section, beginning after the effective date of the amendatory act that added this section and for the next consecutive 10 years, the Michigan film and digital media office may approve an application for a credit against the tax imposed by this part for a state-certified qualified production in an amount determined as follows, but not to exceed 20% of the annual amount allowed to be approved under subsection (5) for that calendar year unless the office determines that a credit in excess of the 20% of that cap is in the best economic interest of this state:

(a) 25% of the qualified production expenditures or, if the office determines that the proposed qualified production includes the approved logos or, if approved logos are prohibited, includes an alternative marketing mechanism approved by the office, 30% of

qualified production expenditures.

(b) 10% of the qualified probationary Michigan vendor expenditures.

(c) 30% of the qualified personnel expenditures attributable to employees who are residents of this state when the applicant commences work on the qualified production.

(d) 20% of the qualified personnel expenditures attributable to employees who are not residents of this state.

(e) If the office determines that the applicant satisfies either of the following, the office may approve an additional 5% under subdivisions (a), (b), (c), and (d), as applicable:

(*i*) Has qualified production expenditures or qualified probationary Michigan vendor expenditures that are attributable to a qualified Michigan vendor that is a minority owned business or woman owned business that is certified under section 4 of 1980 PA 428, MCL 450.774, a business owned by persons with disabilities that is certified under section 4 of the business opportunity act for persons with disabilities, 1988 PA 112, MCL 450.794, or a veteran owned business.

(*ii*) Has qualified personnel expenditures attributable to employees who are members of a minority, persons with disabilities, or veterans. As used in this subdivision:

(A) "Business owned by persons with disabilities" and "persons with disabilities" mean those terms as defined in section 2 of the business opportunity act for persons with disabilities, 1988 PA 112, MCL 450.792.

(B) "Minority", "minority owned business", and "woman owned business" mean those terms as defined in section 1 of 1980 PA 428, MCL 450.771.

(C) "Veteran" means that term as defined in section 1 of 1965 PA 190, MCL 35.61.

(D) "Veteran owned business" means a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by individuals who are veterans and with respect to which more than 50% of the net profit or loss attributable to the business accrues to shareholders who are veterans.

(3) An applicant proposing to produce a qualified production in this state and seeking a credit for that qualified production must submit an application to the office. The application must be submitted in a form prescribed by the office and shall be accompanied by a $1,000.00 nonrefundable application fee for a qualified production that is less than 20 minutes in duration or is commercial photography or a $2,000.00 nonrefundable application fee for a qualified production that is 20 minutes or more in duration and must include 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. As part of the application, an applicant shall provide a detailed description of the proposed qualified production and an estimate of the qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures for that proposed qualified production. The office shall not process or approve an application until it is complete. If an application is considered incomplete, the office shall notify the applicant, within 2 days after receipt of the incomplete application, describing the deficiency and requesting the additional information be submitted within 30 days. The office

shall consider completed applications in the order that they are received. The office shall not consider an application that is received less than 7 days before production begins for a proposed qualified production that is 20 minutes or more in duration or received less than 2 days before the production begins for a proposed qualified production that is less than 20 minutes in duration. Upon receipt of a completed application, the office shall approve or deny an application that is received for a proposed qualified production that is 20 minutes or more in duration within 7 days and for a proposed qualified production that is less than 20 minutes in duration or is commercial photography within 2 days.

(4) In determining whether to approve an application under this section, the office shall consider the limitations under subsection (5) and all of the following:

(a) If the qualified production has verified financing.

(b) If the applicant expects to spend at least $300,000.00 in this state during the production period of a state-certified qualified production that is at least 20 minutes in duration or, for a state-certified qualified production that is less than 20 minutes in duration or is commercial photography, spend at least $50,000.00 in this state during the production period for that state-certified qualified production.

(c) If the applicant is delinquent in a tax or other obligation owed to this state or is owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(d) If the applicant intends to commence work on the qualified production within 90 days after approval of the application and the date of the accredited production certificate.

(5) Of the total number of applications approved under this section and section 677, the following limitations, plus any carryforward as provided under subsection (6) and section 677(5), apply:

(a) For qualified productions that are less than 20 minutes in duration or are commercial photography, not more than $25,000,000.00 in tax credits shall be approved for each of the first 3 calendar years of the credit, $50,000,000.00 in tax credits for each of the second 3 calendar years of the credit, and $75,000,000.00 in tax credits for each of the final 4 calendar years of the credit.

(b) For qualified productions that are 20 minutes or more in duration, not more than $100,000,000.00 in tax credits for each of the first 3 calendar years of the credit, $150,000,000.00 in tax credits for each of the second 3 calendar years of the credit, and $200,000,000.00 in tax credits for each of the final 4 calendar years of the credit.

(6) If the office does not receive enough applications under this section or section 677 to award the entire amount allocated during any calendar year, that remaining amount may be carried forward to the next calendar year.

(7) If the office approves an application, the office shall provide the applicant with an accredited production certificate, and the APC must include all of the following:

(a) A requirement that the applicant commence work in this state on the identified qualified production within 90 days of the date of the APC or else the application is denied. However, upon request submitted by the applicant based on good cause, the office may extend the period to commence work in this state for up to an

additional 90 days. For purposes of this subdivision, good cause includes, but is not limited to, force majeure or delays in securing key actors. The office shall not unreasonably deny a request under this subdivision.

(b) A statement identifying the applicant and the qualified production that the applicant 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) A requirement that the applicant shall give preference to qualified Michigan vendors and residents of this state.

(f) A requirement that the applicant provide the office with the information and independent certification the office and the department determine are necessary to verify qualified production expenditures, qualified probationary Michigan vendor expenditures, qualified personnel expenditures, and eligibility for the credit under this section.

(8) Within 2 years of completion of the qualified production, the applicant shall provide the office with an independent certified public accountant's report on applying the agreed-upon procedures for the qualified production and submit a request to the office for a tax credit certificate, along with any information or independent certification the office considers necessary to verify expenditures and calculate the amount of the credit. The office may request copies of the applicant's books and records for the qualified production and any other additional information it determines is necessary before issuing a TCC and need not issue the

TCC until satisfied that qualified production expenditures, qualified probationary Michigan vendor expenditures, qualified personnel expenditures, and eligibility are adequately established. The additional information requested must include an itemized statement of qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures for the qualified production. The office shall verify the independent certified public accountant's report on applying the agreed-upon procedures for the qualified production and notify the department of the amount of the credit verified and to be awarded to the applicant within 60 days after receipt. After verifying the amount of the credit to be awarded, if the office determines that an applicant has complied with the terms of the APC, the office shall, within 15 days, issue a TCC to the applicant. Each TCC shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the applicant.

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

(c) The applicant's qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures for the qualified production.

(d) The amount of the applicant's credit awarded under this section and the designated tax year.

(e) The date of completion for the state-certified qualified production in this state.

(f) The unique number assigned to the qualified production project by the office under this section.

(g) The applicant's federal employer identification number and

Michigan treasury number.

(h) Any independent certification required by the office.

(9) Information, records, or other data received, prepared, used, or retained by the office under this section that are submitted by an applicant and considered by the applicant 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 applicant, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the applicant at a competitive disadvantage. For purposes of this subsection, information or records that describe commercial and financial operations include that portion of information or records that include any expenses that qualify under this section as qualified personnel expenditures, qualified production expenditures, or qualified probationary Michigan vendor expenditures and for which a credit may be claimed.

(10) The office shall forward a copy of each TCC issued under this section to the governor, the state treasurer, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency. An applicant or assignee that claims a credit under this section shall submit with the annual return filed under this part on which the credit under this section is claimed a copy of the TCC and, if the credit was assigned, a copy of the assignment

form provided for under this section to the department within the same tax year in which the TCC was issued. A credit amount assigned under this subsection may be claimed against the assignee's tax under this part or part 2. A credit amount authorized or assigned to a partnership, limited liability company, or subchapter S corporation under this section or section 677 may be claimed against the partner's, member's, or shareholder's tax liability under this part based on the partner's, member's, or shareholder's proportionate share of ownership or an alternative method approved by the department. If the credit allowed under this section exceeds the tax liability of the applicant or assignee for the tax year or if the taxpayer claiming the credit does not have a tax liability under this part for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 5 years or until used up, whichever occurs first. The department shall, as soon as the information is available, annually report to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency the total amount of the credits claimed under this section that exceed the taxpayer's tax liability for the most recent year that tax information is available and for which returns have cleared and been processed.

(11) The credit under this section shall be claimed after all other credits under this part.

(12) An applicant may transfer and assign all or a portion of a credit awarded under this section to up to 10 assignees. An

applicant may claim a portion of a credit and assign the remaining credit amount. A credit assignment can only be made once within the first year after the qualified production certificate of completion is issued, and a credit assignment under this section is irrevocable. The credit assignment under this subsection shall be made on a form prescribed by the department.

(13) The amount of the credit awarded under this section must be reduced by a redemption fee equal to the greater of $500.00 or 1% of the credit claimed. The redemption fee must be deducted from the credit otherwise payable to the applicant claiming the credit and be deposited by the department in the Michigan film promotion fund.

(14) An applicant that willfully submits information under this section that the applicant knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than the amount of the applicant's credit under this section. A penalty collected under this section must be deposited in the Michigan film promotion fund.

(15) Not later than March 1, 2025 and each March 1 thereafter through March 1, 2034, the office shall evaluate the credits under this section and section 677 and submit to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency an annual report concerning the operation and effectiveness of the credit under this section and section 677. 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 and section 677 at attracting qualified productions to this state during the immediately preceding calendar year. The assessment must include the economic impact data of the credit program, including, but not limited to, all of the following:

(*i*) The number of workday hires created and if those workday hires were entry level, production staff and crew, management, talent-related positions, or vendor-related positions.

(*ii*) The number of workday hires who were residents of this state.

(*iii*) The total amount of qualified production expenditures in this state, and of those expenditures, the amount attributable to qualified Michigan vendors.

(*iv*) The extent to which the qualified productions had the effect of promoting this state as a tourist destination.

(*v*) The extent to which the credit attracted private investment during the production of qualified productions in this state.

(b) The number of applications received for a tax credit under this section and section 677 during the immediately preceding calendar year, the names of the applicants and a brief description of the proposed qualified productions, including the locations in this state to be used in the production of qualified productions, and the proposed amount of money to be expended by the applicants to produce qualified productions in this state in the immediately preceding calendar year.

(c) The number of applications approved under this section and section 677 during the immediately preceding calendar year.

(d) The number of TCCs issued during the immediately preceding calendar year and the total amount of credits awarded by those TCCs.

Sec. 677. (1) Subject to the limitations under this section, beginning after the effective date of the amendatory act that added this section and for the next 10 consecutive years, the Michigan film and digital media office may approve an application for a credit against the tax imposed by this part for a state-certified qualified production in an amount determined as follows but not to exceed 20% of the annual amount allowed to be approved under subsection (4) for that calendar year unless the office determines that a credit in excess of the 20% of that cap is in the best economic interest of this state:

(a) 25% of the qualified production expenditures or, if the office determines that the proposed qualified production includes the approved logos or, if approved logos are prohibited, includes an alternative marketing mechanism approved by the office, 30% of qualified production expenditures.

(b) 10% of the qualified probationary Michigan vendor expenditures.

(c) 30% of the qualified personnel expenditures attributable to employees who are residents of this state when the applicant commences work on the qualified production.

(d) 20% of the qualified personnel expenditures attributable to employees who are not residents of this state.

(e) If the office determines that the applicant satisfies either of the following, the office may approve an additional 5% under subdivisions (a), (b), (c), and (d), as applicable:

(*i*) Has qualified production expenditures or qualified

probationary Michigan vendor expenditures that are attributable to a qualified Michigan vendor that is a minority owned business or woman owned business that is certified under section 4 of 1980 PA 428, MCL 450.774, a business owned by persons with disabilities that is certified under section 4 of the business opportunity act for persons with disabilities, 1988 PA 112, MCL 450.794, or a veteran owned business.

(*ii*) Has qualified personnel expenditures attributable to employees who are members of a minority, persons with disabilities, or veterans. As used in this subdivision:

(A) "Business owned by persons with disabilities" and "persons with disabilities" mean those terms as defined in section 2 of the business opportunity act for persons with disabilities, 1988 PA 112, MCL 450.792.

(B) "Minority", "minority owned business", and "woman owned business" mean those terms as defined in section 1 of 1980 PA 428, MCL 450.771.

(C) "Veteran" means that term as defined in section 1 of 1965 PA 190, MCL 35.61.

(D) "Veteran owned business" means a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by individuals who are veterans and with respect to which more than 50% of the net profit or loss attributable to the business accrues to shareholders who are veterans.

(2) An applicant proposing to produce a qualified production in this state and seeking a credit for that qualified production must submit an application to the office. The application must be submitted in a form prescribed by the office and shall be

accompanied by a $1,000.00 nonrefundable application fee for a qualified production that is less than 20 minutes in duration or is commercial photography or a $2,000.00 nonrefundable application fee for a qualified production that is 20 minutes or more in duration and must include 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. As part of the application, an applicant shall provide a detailed description of the proposed qualified production and an estimate of the qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures for the proposed qualified production. The office shall not process or approve an application until it is complete. If an application is considered incomplete, the office shall notify the applicant, within 2 days after receipt of the incomplete application, describing the deficiency and requesting the additional information be submitted within 30 days. The office shall consider completed applications in the order that they are received. The office shall not consider an application that is received less than 7 days before production begins for a proposed qualified production that is 20 minutes or more in duration or received less than 2 days before the production begins for a proposed qualified production that is less than 20 minutes in duration. Upon receipt of a completed application, the office shall approve or deny an application that is received for a proposed qualified production that is 20 minutes or more in duration within 7 days and for a proposed qualified production that is less than 20 minutes in duration or is commercial photography within 2 days.

(3) In determining whether to approve an application, the

office shall consider the limitations under subsection (4) and all of the following:

(a) If the qualified production has verified financing.

(b) If the applicant expects to spend at least $300,000.00 in this state during the production period of a state-certified qualified production that is at least 20 minutes in duration or, for a state-certified qualified production that is less than 20 minutes in duration or is commercial photography, spend at least $50,000.00 in this state during the production period for that state-certified qualified production.

(c) If the applicant is delinquent in a tax or other obligation owed to this state or is owned or under common control of an entity that is delinquent in a tax or other obligation owed to this state.

(d) If the applicant intends to commence work on the qualified production within 90 days after approval of the application and the date of the accredited production certificate.

(4) Of the total number of applications approved under this section and section 285, the following limitations, plus any carryforward as provided under subsection (5) and section 285(6), apply:

(a) For qualified productions that are less than 20 minutes in duration or are commercial photography, not more than $25,000,000.00 in tax credits shall be approved for each of the first 3 calendar years of the credit, $50,000,000.00 in tax credits for each of the second 3 calendar years of the credit, and $75,000,000.00 in tax credits for each of the final 4 calendar years of the credit.

(b) For qualified productions that are 20 minutes or more in

duration, not more than $100,000,000.00 in tax credits for each of the first 3 calendar years of the credit, $150,000,000.00 in tax credits for each of the second 3 calendar years of the credit, and $200,000,000.00 in tax credits for each of the final 4 calendar years of the credit.

(5) If the office does not receive enough applications under this section and section 285 to award the entire amount allocated during any calendar year, that remaining amount may be carried forward to the next calendar year.

(6) If the office approves an application, the office shall provide the applicant with an accredited production certificate and the APC must include all of the following:

(a) A requirement that the applicant commence work in this state on the identified qualified production within 90 days of the date of the APC or else the application is denied. However, upon request submitted by the applicant based on good cause, the office may extend the period to commence work in this state for up to an additional 90 days. For purposes of this subdivision, good cause includes, but is not limited to, force majeure or delays in securing key actors. The office shall not unreasonably deny a request under this subdivision.

(b) A statement identifying the applicant and the qualified production that the applicant 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) A requirement that the applicant shall give preference to

qualified Michigan vendors and residents of this state.

(f) A requirement that the applicant provide the office with the information and independent certification the office and the department determines is necessary to verify qualified production expenditures, qualified probationary Michigan vendor expenditures, qualified personnel expenditures, and eligibility for the credit under this section.

(7) Within 2 years of completion of the qualified production, the applicant shall provide the office with an independent certified public accountant's report on applying the agreed-upon procedures for the qualified production and submit a request to the office for a tax credit certificate, along with any information or independent certification the office considers necessary to verify expenditures and calculate the amount of the credit. The office may request copies of the applicant's books and records for the qualified production and any other additional information it determines is necessary before issuing a TCC and need not issue the TCC until satisfied that qualified production expenditures, qualified probationary Michigan vendor expenditures, qualified personnel expenditures, and eligibility are adequately established. The additional information requested must include an itemized statement of qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures for the qualified production. The office shall verify the independent certified public accountant's report on applying the agreed-upon procedures for the qualified production and notify the department of the amount of the credit verified and to be awarded to the applicant within 60 days after receipt. After verifying the amount of the credit to be awarded, if the office

determines that an applicant has complied with the terms of the APC, the office shall, within 15 days, issue a qualified production certificate of completion to the applicant. Each qualified production certificate of completion shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the applicant.

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

(c) The applicant's qualified production expenditures, qualified probationary Michigan vendor expenditures, and qualified personnel expenditures for the qualified production.

(d) The amount of the applicant's credit allowed under this section and the designated tax year.

(e) The date of completion for the state-certified qualified production in this state.

(f) The unique number assigned to the qualified production project by the office under this section.

(g) The applicant's federal employer identification number or Michigan treasury number.

(h) Any independent certification required by the office.

(8) Information, records, or other data received, prepared, used, or retained by the office under this section that are submitted by an applicant and considered by the applicant 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 applicant, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the applicant at a competitive disadvantage. For purposes of this subsection, information or records that describe commercial and financial operations include that portion of information or records that include any expenses that qualify under this section as qualified personnel expenditures, qualified production expenditures, or qualified probationary Michigan vendor expenditures and for which a credit may be claimed.

(9) The office shall forward a copy of each TCC issued under this section to the governor, the state treasurer, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency. An applicant or assignee that claims a credit under this section shall submit with the annual return filed under this part on which the credit under this section is claimed a copy of the TCC and, if the credit was assigned, a copy of the assignment form provided for under this section to the department within the same tax year in which the TCC was issued. A credit amount assigned under this subsection may be claimed against the assignee's tax under this part or part 1. If the credit allowed under this section exceeds the tax liability of the applicant or assignee for the tax year or if the taxpayer claiming the credit does not have a tax liability under this part for the tax year, that portion that exceeds the tax liability for the tax year shall not be refunded but may be carried forward to offset tax liability in subsequent tax years for 5 years or until used up, whichever occurs first. The

department shall, as soon as the information is available, annually report to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency the total amount of the credits claimed under this section that exceed the taxpayer's tax liability for the most recent year that tax information is available and for which returns have cleared and been processed.

(10) The credit under this section shall be claimed after all other credits under this part.

(11) An applicant may transfer and assign all or a portion of a credit awarded under this section to up to 10 assignees. An applicant may claim a portion of a credit and assign the remaining credit amount. A credit assignment can only be made within the first year after the qualified production certificate of completion is issued, and a credit assignment under this section is irrevocable. The credit assignment under this subsection shall be made on a form prescribed by the department.

(12) The amount of the credit awarded under this section must be reduced by a redemption fee equal to the greater of $500.00 or 1% of the credit claimed. The redemption fee must be deducted from the credit otherwise payable to the applicant claiming the credit and be deposited by the department in the Michigan film promotion fund.

(13) An applicant that willfully submits information under this section that the applicant knows to be fraudulent or false shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than the amount of the

applicant's credit under this section. A penalty collected under this section must be deposited in the Michigan film promotion fund.

Sec. 701. As used in this chapter:

(a) "Accredited production certificate", "applicant", "loan out company", and "qualified production" mean those terms as defined in section 285.

(b) ~~(a)~~ "Casino" means that term as defined in section 110.

(c) ~~(b)~~ "Casino licensee" means a person licensed to operate a casino under the Michigan Gaming Control and Revenue Act, 1996 IL 1, MCL 432.201 to 432.226.

~~(c) "Eligible production company" means that term as defined under section 455 of the Michigan business tax act, 2007 PA 36, MCL 208.1455.~~

(d) "Flow-through entity" means an entity that for the applicable tax year is treated as an S corporation under section 1362(a) of the internal revenue code, a general partnership, a limited partnership, a limited liability partnership, or a limited liability company, that for the applicable tax year is not taxed as a corporation for federal income tax purposes. Flow-through entity does not include any entity disregarded under section 699.

(e) "Member" means a shareholder of an S corporation, a partner in a general partnership, a limited partnership, or a limited liability partnership, a member of a limited liability company, or a beneficiary of a trust, that is a flow-through entity.

(f) "Nonresident" means an individual who is not a resident of or domiciled in this state, a business entity that does not have its commercial domicile in this state, or a trust not organized in this state.

(g) "Partnership" means a taxpayer that is required to or has elected to file as a partnership for federal income tax purposes.

(h) "Publicly traded partnership" means that term as defined under section 7704 of the internal revenue code.

(i) "Race meeting licensee" and "track licensee" mean a person to whom a race meeting license or track license is issued pursuant to section 8 of the horse racing law of 1995, 1995 PA 279, MCL 431.308.

(j) "S corporation" means a corporation electing taxation under subchapter S of chapter 1 of subtitle A of the internal revenue code, sections 1361 to 1379 of the internal revenue code.

Sec. 703. (1) A person who disburses pension or annuity payments, except as otherwise provided under this section, shall withhold a tax in an amount computed by applying the rate prescribed in section 51 on the taxable part of payments from an employer pension, annuity, profit-sharing, stock bonus, or other deferred compensation plan as well as from an individual retirement arrangement, an annuity, an endowment, or a life insurance contract issued by a life insurance company. Withholding shall be calculated on the taxable disbursement after deducting from the taxable portion the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act. Withholding is not required on any part of a distribution that is not expected to be includable in the recipient's gross income or that is deductible from adjusted gross income under section 30(1)(e) or (f).

(2) Every employer in this state required under the provisions of the internal revenue code to withhold a tax on the compensation of an individual, except as otherwise provided, shall deduct and

withhold a tax in an amount computed by applying, except as provided by subsection (14), the rate prescribed in section 51 to the remainder of the compensation after deducting from compensation the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act that the period of time covered by the compensation is of 1 year. The department may prescribe withholding tables that may be used by employers to compute the amount of tax required to be withheld.

(3) Except as otherwise provided under this section, for tax years that begin before July 1, 2016, every flow-through entity in this state shall withhold a tax in an amount computed by applying the rate prescribed in section 51 to the distributive share of taxable income reasonably expected to accrue after allocation and apportionment under chapter 3 of each nonresident member who is an individual after deducting from that distributive income the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share that is reasonably expected to accrue during the tax year of the flow-through entity.

(4) Except as otherwise provided under this section, for tax years that begin before July 1, 2016, every flow-through entity with business activity in this state that has more than $200,000.00

of business income reasonably expected to accrue in the tax year after allocation or apportionment shall withhold a tax in an amount computed by applying the rate prescribed in section 623 to the distributive share of the business income of each member that is a corporation or that is a flow-through entity. For purposes of calculating the $200,000.00 withholding threshold, the business income of a flow-through entity shall be apportioned to this state by multiplying the business income by the sales factor of the flow-through entity. The sales factor of the flow-through entity is a fraction, the numerator of which is the total sales of the flow-through entity in this state during the tax year and the denominator of which is the total sales of the flow-through entity everywhere during the tax year. As used in this subsection, "business income" means that term as defined in section 603(2). For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the members. As used in this subsection, "sales" means that term as defined in section 609 and sales in this state is determined as provided in sections 665 and 669. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share of business income that is reasonably expected to accrue during the tax year of the flow-through entity.

(5) For tax years that begin before July 1, 2016, if a flow-through entity is subject to the withholding requirements of subsection (4), then a member of that flow-through entity that is itself a flow-through entity shall withhold a tax on the distributive share of business income as described in subsection (4) of each of its members. The department shall apply tax withheld by a flow-through entity on the distributive share of business income of a member flow-through entity to the withholding required of that member flow-through entity. All of the taxes withheld under this section shall accrue to the state on April 15, July 15, and October 15 of the flow-through entity's tax year and January 15 of the following year, except a flow-through entity that is not on a calendar year basis shall substitute the appropriate due dates in the flow-through entity's fiscal year that correspond to those in a calendar year. Withholding for each period shall be equal to 1/4 of the total withholding calculated on the distributive share of business income that is reasonably expected to accrue during the tax year of the flow-through entity.

(6) Every casino licensee shall withhold a tax in an amount computed by applying the rate prescribed in section 51 to the winnings of a nonresident reportable by the casino licensee under the internal revenue code.

(7) Every race meeting licensee or track licensee shall withhold a tax in an amount computed by applying the rate prescribed in section 51 to a payoff price on a winning ticket of a nonresident reportable by the race meeting licensee or track licensee under the internal revenue code that is the result of pari-mutuel wagering at a licensed race meeting.

(8) Every casino licensee or race meeting licensee or track

licensee shall report winnings of a resident reportable by the casino licensee or race meeting licensee or track licensee under the internal revenue code to the department in the same manner and format as required under the internal revenue code.

(9) Every ~~eligible production company~~ **applicant with an accredited production certificate** shall, to the extent not withheld by a ~~professional services corporation or professional employer organization,~~ **loan out company**, deduct and withhold a tax in an amount computed by applying the rate prescribed in section 51 to the remainder of the payments made to the ~~professional services corporation or professional employer organization~~ **loan out company** for the services of ~~a performing artist or crew member~~ **an individual in a qualified production** after deducting from those payments the same proportion of the total amount of personal and dependency exemptions of the individuals allowed under this act.

(10) Every publicly traded partnership that has equity securities registered with the securities and exchange commission under section 12 of title I of the securities and exchange act of 1934, 15 USC 78*l*, shall not be subject to withholding.

(11) Except as otherwise provided under this subsection, all of the taxes withheld under this section shall accrue to the state on the last day of the month in which the taxes are withheld but shall be returned and paid to the department by the employer, ~~eligible production company,~~ **applicant**, casino licensee, or race meeting licensee or track licensee within 15 days after the end of any month or as provided in section 705. For an employer that has entered into an agreement with a community college pursuant to chapter 13 of the community college act of 1966, 1966 PA 331, MCL 389.161 to 389.166, a portion of the taxes withheld under this

section that are attributable to each employee in a new job created pursuant to the agreement shall accrue to the community college on the last day of the month in which the taxes are withheld but shall be returned and paid to the community college by the employer within 15 days after the end of any month or as provided in section 705 for as long as the agreement remains in effect. For purposes of this act and 1941 PA 122, MCL 205.1 to 205.31, payments made by an employer to a community college under this subsection shall be considered income taxes paid to this state.

(12) A person required by this section to deduct and withhold taxes on income under this section holds the amount of tax withheld as a trustee for this state and is liable for the payment of the tax to this state or, if applicable, to the community college and is not liable to any individual for the amount of the payment.

(13) An employer in this state is not required to deduct and withhold a tax on the compensation paid to a nonresident individual employee, who, under section 256, may claim a tax credit equal to or in excess of the tax estimated to be due for the tax year or is exempted from liability for the tax imposed by this act. In each tax year, the nonresident individual shall furnish to the employer, on a form approved by the department, a verified statement of nonresidence.

(14) A person required to withhold a tax under this act, by the fifteenth day of the following month, shall provide the department with a copy of any exemption certificate on which a person with income subject to withholding under subsection (6) or (7) claims more than 9 personal or dependency exemptions, claims a status that exempts the person subject to withholding under subsection (6) or (7) from withholding under this section.

(15) A person who disburses annuity payments pursuant to the terms of a qualified charitable gift annuity is not required to deduct and withhold a tax on those payments as prescribed under subsection (1). As used in this subsection, "qualified charitable gift annuity" means an annuity described under section 501(m)(5) of the internal revenue code and issued by an organization exempt under section 501(c)(3) of the internal revenue code.

(16) Notwithstanding the requirements of subsections (4) and (5), if a flow-through entity receives an exemption certificate from a member other than a nonresident individual, the flow-through entity shall not withhold a tax on the distributive share of the business income of that member if all of the following conditions are met:

(a) The exemption certificate is completed by the member in the form and manner prescribed by the department and certifies that the member will do all of the following:

(*i*) File the returns required under this act.

(*ii*) Pay or withhold the tax required under this act on the distributive share of the business income received from any flow-through entity in which the member has an ownership or beneficial interest, directly or indirectly through 1 or more other flow-through entities.

(*iii*) Submit to the taxing jurisdiction of this state for purposes of collection of the tax under this act together with related interest and penalties under 1941 PA 122, MCL 205.1 to 205.31, imposed on the member with respect to the distributive share of the business income of that member.

(b) The department may require the member to file the exemption certificate with the department and provide a copy to the flow-through entity.

(c) The department may require a flow-through entity that receives an exemption certificate to attach a copy of the exemption certificate to the annual reconciliation return as required by section 711. A flow-through entity that is entirely exempt from the withholding requirements of subsection (4) or (5) by this subsection may be required to furnish a copy of the exemption certificate in another manner prescribed by the department.

(d) A copy of the exemption certificate shall be retained by the member and flow-through entity and made available to the department upon request. Any copy of the exemption certificate shall be maintained in a format and for the period required by 1941 PA 122, MCL 205.1 to 205.31.

(17) The department may revoke the election provided for in subsection (16) if it determines that the member or a flow-through entity is not abiding by the terms of the exemption certificate or the requirements of subsection (16). If the department does revoke the election option under subsection (16), the department shall notify the affected flow-through entity that withholding is required on the member under subsection (4) or (5), beginning 60 days after notice of revocation is received.

(18) Notwithstanding the requirements of subsections (4) and (5), a flow-through entity is not required to withhold in accordance with this section for a member that voluntarily elects to file a return and pay the tax imposed by the Michigan business tax act under section 680 or section 500 of the Michigan business tax act, 2007 PA 36, MCL 208.1500.

(19) Notwithstanding the withholding requirements of subsection (3), (4), or (5), a flow-through entity is not required

to comply with those withholding requirements to the extent that the withholding would violate any of the following:

(a) Housing assistance payment programs distribution restrictions under 24 CFR part 880, 881, 883, or 891.

(b) Rural housing service return on investment restrictions under 7 CFR 3560.68 or 3560.305.

(c) Articles of incorporation or other document of organization adopted pursuant to section 83 or 93 of the state housing development authority act of 1966, 1966 PA 346, MCL 125.1483 and 125.1493.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No.____ or House Bill No. 4907 (request no. 01663'23) of the 102nd Legislature is enacted into law.