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BILL ANALYSIS

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Senate Bills 796 and 889 (as enacted)
Sponsor: Senator Nancy Cassis
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACTS 312 & 313 of 2010

Date Completed: 1-24-11

RATIONALE

A package of legislation enacted in 2008 offers incentives to filmmakers to produce movies, television shows, and other film and media productions in Michigan. The incentives include tax credits for production expenditures, job training costs, and investments in production facilities, as well as loan programs and the free use of public property. Since its enactment, the tax credit for production expenditures has received considerable attention. This credit is authorized by Section 455 of the Michigan Business Tax (MBT) Act, which allows the Michigan Film Office, with the concurrence of the State Treasurer, to enter into agreements with eligible production companies for a refundable MBT or income tax credit. To qualify for the credit, a production company must spend at least \$50,000 in Michigan for the development, preproduction, production, and postproduction costs of a State-certified qualified production (such as a motion picture, television series, music video, video game, or digital animation). The amount of a credit is equal to 42% of direct production expenditures for a production in a "core community" (a qualified local governmental unit as defined by the Obsolete Property Rehabilitation Act), 40% of direct production expenses for a production elsewhere, and 30% for qualified personnel expenditures. In order to claim the credit, the production company must obtain a postproduction certificate of completion from the Film Office.

In addition to allowing the credit, Section 455 of the MBT Act requires the Michigan Film Office to submit an annual report, containing specific information about the credit, to the Governor, the president of the

Michigan Strategic Fund (which houses the Film Office), and the chairpersons of two legislative committees. Section 455 also provides for the confidentiality of information submitted by production companies to the Film Office.

After the Film Office issued its 2008 Annual Report, the report was met with criticism. It was said to contain inadequate information about the film production credit and to lack transparency. In addition, there were complaints about the difficulty of obtaining information from the Film Office. To increase the availability of public information about the cost and effectiveness of the credit, it was suggested that the reporting requirements should be expanded and the confidentiality requirements be revised.

CONTENT

Senate Bill 796 amended Section 455 of the Michigan Business Tax Act to do the following:

- **Require the Michigan Film Office to post on its website a semiannual report regarding production companies' tax credits for production expenditures.**
- **Exclude information about qualified personnel expenditures and direct production expenditures from confidentiality requirements.**
- **Require the Film Office's annual report to include additional information about production company personnel, as well as the amount of other State and local assistance provided to eligible production companies.**

- **Require the Film Office to forward copies of postproduction certificates of completion to the Governor, the Michigan Strategic Fund president, the Senate Finance and House Tax Policy Committee chairpersons, and the Senate and House Fiscal Agency directors.**
- **Require the Treasury Department to report to those individuals on the amount of tax credits in excess of a taxpayer's tax liability.**

Senate Bill 889 amended the revenue Act to allow the disclosure of information that must be reported under Section 455 of the MBT Act; information regarding agreements for MBT credits for production expenditures, infrastructure investment, and job training expenditures; and the amount of those tax credits.

The bills took effect on December 21, 2010.

Senate Bill 796

Semiannual Report

The bill requires the Film Office, on the 15th of January and July each year, to make a detailed semiannual report available on its website. The report must contain the number of applications received for a production expenditure credit in the immediately preceding six months, including the name of the eligible production company that submitted the application and a brief description of the proposed qualified production, as well as the locations in this State to be used in the production and the proposed amount of money to be spent by the company to produce the qualified production in Michigan.

The report also must include the number of applications approved during the immediately preceding six months, the total number of postproduction certificates of completion issued during that time period, and the total amount of credits certified under those certificates of completion.

Confidentiality

Under the MBT Act, the disclosure requirements of the Freedom of Information Act do not apply to information, records, or

other data received, prepared, used, or retained by the Michigan Film Office that are submitted by an eligible production company and considered by the taxpayer, and acknowledged by the Film Office, to be confidential. Information, records, or other data may be considered confidential only to the extent that they describe the company's commercial and financial operations or intellectual property, the information or records have not been publicly disseminated at any time, and disclosure may put the company at a competitive disadvantage.

Under the bill, for purposes of these provisions, information or records that describe commercial and financial operations do not include that portion of information or records containing any expenses that qualify under Section 455 as qualified personnel expenditures or direct production expenditures and for which a credit may be claimed.

Annual Report

Section 455 requires the Film Office, by March 1 each year, to submit to the Governor, the president of the Michigan Strategic Fund, the chairperson of the Senate Finance Committee, and the chairperson of the House Tax Policy Committee, an annual report concerning the operation and effectiveness of the credit. Under the bill, the Film Office also must submit the report to the directors of the Senate Fiscal Agency and the House Fiscal Agency.

The report must contain specified information for the preceding year, including a brief assessment of the overall effectiveness of the credit at attracting qualified productions to the State; the number of qualified productions for which an eligible production company applied for a credit; the amount spent by eligible production companies to produce each qualified production in the State; and the value of all tax credit certificates of completion issued.

Previously, the report also had to include an estimate of the number of people employed in the State by eligible production companies that qualified for the credit. The bill, instead, requires the report to include the number of below-the-line crew employed in the State by eligible production

companies that qualified for the credit, how many of those employees were residents of the State and not included in qualified personnel expenditures, and the total number of hours worked on the qualified production.

For requests for postproduction certificates of completion submitted after January 2, 2011, the bill also requires the report to include the following information regarding people employed in the preceding year by eligible production companies that qualified for the credit:

- The number of above-the-line personnel (i.e., personnel who are not below-the-line crew) employed in the State and how many of them were residents of the State.
- The number of people employed in the State who earned more than \$250,000 on a qualified production, and how many were residents of the State.

In addition, the bill requires the report to include the amount known by the Film Office of other State and local assistance provided to eligible production companies in addition to the tax credit.

(The MBT Act defines "below the line crew" as people employed by an eligible production company for State-certified qualified production expenditures made after production begins and before production is completed. The term includes specified personnel such as a best boy, boom operator, camera operator, film editor, gaffer, grip, lighting crew, and music editor, and similar personnel. The term does not include a producer, director, writer, actor, or similar personnel.)

Postproduction Certificate of Completion

Under Section 455, if the Film Office determines that an eligible production company has complied with the terms of its agreement, the Office must issue a postproduction certificate of completion to the company. The company must submit the certificate of completion to the Department of Treasury. A certificate of completion must contain specified information, including the company's direct production expenditures and qualified personnel expenditures for the qualified production.

The bill requires the Film Office to forward a copy of each postproduction certificate of completion issued 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, and the directors of the Senate Fiscal Agency and the House Fiscal Agency.

The bill also requires the Department, as soon as the information is available, to report annually to those individuals the total amount of the credits certified under Section 455 that exceed the taxpayer's tax liability for the most recent year for which tax information is available and for which returns have cleared and been processed.

Senate Bill 889

The revenue Act prohibits a current or former employee or authorized representative of the Department of Treasury, or anyone connected with the Department, from divulging any facts or information obtained in connection with the administration of a tax, except as otherwise provided. A violation is a felony punishable by a maximum fine of \$5,000, imprisonment for up to five years, or both. If the violator is a State employee, he or she must be dismissed from employment upon conviction.

The bill makes an exception to this prohibition. Under the bill, a person may disclose information required to be reported under Section 455 of the MBT Act. A person also may disclose an application to enter into an agreement, a communication denying an application to enter into an agreement, an agreement, a postproduction certificate, a communication denying a postproduction certificate, or the total amount of credits claimed in a tax year under Section 455, Section 457, and Section 459 of the MBT Act, notwithstanding the confidentiality requirements of those sections. (Section 457 allows an MBT credit for investment in a qualified film and digital media infrastructure project. Section 459 allows a credit for eligible production companies' qualified job training expenditures.)

MCL 208.1455 (S.B. 796)
205.28 (S.B. 889)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since the film incentives were enacted, the tax credit for production expenditures has become the subject of considerable controversy. There is widespread disagreement regarding the operation and effectiveness of the credit and its cost to the State. In addition to the Film Office's 2008 Annual Report, various studies have reviewed the credit, or aspects of it, and reached differing conclusions. Although the film incentives were designed to boost and diversify the State's economy, and create jobs for Michigan residents, without adequate data it is not possible to know whether these goals are being met, or whether the credit's impact on the State budget is justified.

The Film Office's annual report might have complied with the letter of the law, but it did not provide the information needed to measure the effectiveness of the credit. This was due in part to vagueness in the statutory requirements that spelled out the contents of the report. At the same time, the Film Office was subject to confidentiality requirements that were also somewhat unclear.

It is essential that policy-makers have adequate data in order to decide whether to retain, eliminate, or cap the credit for film production expenditures and other film-related credits. Members of the public also are entitled to this information. Senate Bill 796 will help ensure that informed decisions can be made, by removing qualified personnel and production expenditures from the confidentiality requirements; requiring the Film Office to post a detailed report twice a year; requiring the Film Office's annual report to break down employees as below-the-line crew, above-the-line personnel, and personnel earning more than \$250,000, and indicate whether employees are Michigan residents; requiring the Film Office to give copies of postproduction certificates of completion to specific officials; and requiring the Treasury Department to report the amount of tax credits in excess of tax liability. Under Senate Bill 889, Treasury employees will be able to disclose

information about tax credit agreements, related communications, and the amount of credits claimed, without violating the law.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills will have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Pratt

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.