

SENATE BILL No. 383

May 12, 2011, Introduced by Senators KOWALL and SMITH and referred to the Committee on Economic Development.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 455, 457, and 459 (MCL 208.1455, 208.1457, and 208.1459), section 455 as amended by 2010 PA 312, section 457 as added by 2008 PA 86, and section 459 as added by 2008 PA 74.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 455. (1) The Michigan film office, with the concurrence
2 of the state treasurer, may enter into an agreement with an
3 eligible production company providing the company with a credit
4 against the tax imposed by this act or against taxes withheld under
5 chapter 7 of the income tax act of 1967, 1967 PA 281, MCL 206.351
6 to 206.367, as provided under this section and section 367 of the
7 income tax act of 1967, 1967 PA 281, MCL 206.367. To qualify for

1 the credit under this section, a company shall meet all of the
2 following requirements:

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

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

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

9 (d) Submit the postproduction certificate of completion issued
10 by the office under subsection (5) to the department under
11 subsection (8).

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

15 (2) For direct production expenditures or qualified personnel
16 expenditures made after February 29, 2008 **AND BEFORE THE EFFECTIVE**
17 **DATE OF THE AMENDATORY ACT THAT ADDED THIS LANGUAGE**, an agreement
18 under this section may provide for an eligible production company
19 to claim a tax credit equal to 42% of direct production
20 expenditures for a state certified qualified production in a core
21 community, 40% of direct production expenditures for a state
22 certified qualified production in part of this state other than a
23 core community, and 30% for qualified personnel expenditures. **FOR**
24 **DIRECT PRODUCTION EXPENDITURES OR QUALIFIED PERSONNEL EXPENDITURES**
25 **MADE ON AND AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
26 **ADDED THIS LANGUAGE, AN AGREEMENT UNDER THIS SECTION MAY PROVIDE**
27 **FOR AN ELIGIBLE PRODUCTION COMPANY TO CLAIM A TAX CREDIT AS**

1 DETERMINED BY THE MICHIGAN FILM OFFICE, WITH THE CONCURRENCE OF THE
2 STATE TREASURER, OF UP TO 42% FOR EACH SEPARATE DIRECT PRODUCTION
3 EXPENDITURE FOR A STATE CERTIFIED QUALIFIED PRODUCTION IN A CORE
4 COMMUNITY, UP TO 40% FOR EACH SEPARATE DIRECT PRODUCTION
5 EXPENDITURE FOR A STATE CERTIFIED QUALIFIED PRODUCTION IN PART OF
6 THIS STATE OTHER THAN A CORE COMMUNITY, AND UP TO 30% FOR EACH
7 SEPARATE QUALIFIED PERSONNEL EXPENDITURE. A taxpayer shall not
8 claim a credit under this section for any of the following:

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

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

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

18 (3) An eligible production company intending to produce a
19 qualified production in this state, or that initiated production of
20 a qualified production after February 29, 2008 and before April 8,
21 2008, may submit an application to enter into an agreement under
22 this section to the Michigan film office. Except for a qualified
23 production for which production was initiated after February 29,
24 2008 and before April 8, 2008, direct production expenditures and
25 qualified personnel expenditures incurred prior to approval of an
26 agreement under this section are not eligible for the credit under
27 this section. The request shall be submitted in a form prescribed

1 by the Michigan film office and shall be accompanied by a \$100.00
2 application fee and all of the information and records requested by
3 the office. An application fee received by the office under this
4 subsection shall be deposited in the Michigan film promotion fund.
5 The office shall not process the application until it is complete.
6 As part of the application, the company shall estimate direct
7 production expenditures and qualified personnel expenditures for an
8 identified qualified production. If the office, with the
9 concurrence of the state treasurer, determines to enter into an
10 agreement under this section, the agreement shall provide for all
11 of the following:

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

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

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

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

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

1 state.

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

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

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

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

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

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

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

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

26 (5) If the Michigan film office determines that an eligible
27 production company has complied with the terms of an agreement

1 entered into under this section, the office shall issue a
2 postproduction certificate of completion to the company. The
3 company shall submit a request to the office for a postproduction
4 certificate of completion on a form prescribed by the office, along
5 with any information or independent certification the office or the
6 department deems necessary. The office shall process each request
7 within 60 days after the request is complete. However, the office
8 may request additional information or independent certification
9 before issuing a postproduction certificate of completion and need
10 not issue the postproduction certificate of completion until
11 satisfied that direct production expenditures, qualified personnel
12 expenditures, and eligibility are adequately established. The
13 additional information requested may include a report of direct
14 production expenditures and qualified personnel expenditures for
15 the qualified production audited and certified by an independent
16 certified public accountant. Each postproduction certificate of
17 completion shall be signed by the Michigan film commissioner and
18 shall include the following information:

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

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

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

25 **(D) THE ELIGIBLE PRODUCTION COMPANY'S CREDIT AMOUNT.**

26 **(E)** ~~(d)~~—The date of completion for the qualified production in
27 this state.

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

3 (G) ~~(f)~~—The eligible production company's federal employer
4 identification number or Michigan treasury number.

5 (H) ~~(g)~~—Any independent certification required by the
6 department or the Michigan film office.

7 (6) Information, records, or other data received, prepared,
8 used, or retained by the Michigan film office under this section
9 that are submitted by an eligible production company and considered
10 by the taxpayer and acknowledged by the office as confidential
11 shall not be subject to the disclosure requirements of the freedom
12 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
13 records, or other data shall only be considered confidential to the
14 extent that the information or records describe the commercial and
15 financial operations or intellectual property of the company, the
16 information or records have not been publicly disseminated at any
17 time, and disclosure of the information or records may put the
18 company at a competitive disadvantage. For purposes of this
19 subsection, information or records that describe commercial and
20 financial operations do not include that portion of information or
21 records that include any expenses that qualify under this section
22 as qualified personnel expenditures or direct production
23 expenditures and for which a credit may be claimed.

24 (7) The Michigan film office shall, on January 15 and July 15
25 in each year, make available on its website a detailed semiannual
26 report that includes, at a minimum, all of the following:

27 (a) The number of applications received for a credit under

1 this section in the immediately preceding 6 months, including the
2 name of the eligible production company that submitted the
3 application and a brief description of the proposed qualified
4 production, including the locations in this state to be used in the
5 production and the proposed amount of money to be expended by the
6 eligible production company to produce the qualified production in
7 this state.

8 (b) The number of applications approved during the immediately
9 preceding 6 months.

10 (c) The number of postproduction certificates of completion
11 issued during the immediately preceding 6 months and the total
12 amount of credits certified under those postproduction certificates
13 of completion.

14 (8) An eligible production company shall submit a
15 postproduction certificate of completion issued under subsection
16 (5) to the department. The Michigan film office shall forward a
17 copy of each postproduction certificate of completion issued
18 pursuant to this subsection to the governor, the president of the
19 Michigan strategic fund, the chairperson of the senate finance
20 committee, the chairperson of the house tax policy committee, the
21 director of the senate fiscal agency, and the director of the house
22 fiscal agency. If the credit allowed under this section exceeds the
23 tax liability of the company for the tax year or if the company
24 claiming the credit does not have a tax liability under this act
25 for the tax year, the department shall refund the excess or pay the
26 amount of the credit to the company. The department shall, as soon
27 as the information is available, annually report to the governor,

1 the president of the Michigan strategic fund, the chairperson of
2 the senate finance committee, the chairperson of the house tax
3 policy committee, the director of the senate fiscal agency, and the
4 director of the house fiscal agency the total amount of the credits
5 certified under this section that exceed the taxpayer's tax
6 liability for the most recent year that tax information is
7 available and for which returns have cleared and been processed.
8 The credit under this section shall be claimed after all other
9 credits under this act.

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

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

26 (11) A taxpayer that willfully submits information under this
27 section that the taxpayer knows to be fraudulent or false shall, in

1 addition to any other penalties provided by law, be liable for a
2 civil penalty equal to the amount of the taxpayer's credit under
3 this section. A penalty collected under this section shall be
4 deposited in the Michigan film promotion fund.

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

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

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

25 (c) The amount of money spent by each eligible production
26 company identified in subdivision (b) to produce each qualified
27 production in this state and a breakdown of all production spending

1 by all companies classified as goods, services, or salaries and
2 wages in the immediately preceding calendar year.

3 (d) The number of below the line crew employed in this state
4 by eligible production companies that qualified for the credit
5 under this section in the immediately preceding calendar year, how
6 many of those persons employed were residents of this state and not
7 included in qualified personnel expenditures, and the total number
8 of hours worked on the qualified production for which a credit is
9 granted.

10 (e) For requests for postproduction certificates of completion
11 submitted after January 2, 2011, the number of above the line
12 personnel employed in this state by the eligible production
13 companies that qualified for the credit under this section in the
14 immediately preceding calendar year and how many of those personnel
15 employed were residents of this state. For purposes of this
16 subdivision, above the line personnel means personnel who are not
17 below the line crew.

18 (f) For requests for postproduction certificates of completion
19 submitted after January 2, 2011, the number of persons employed in
20 this state by the eligible production companies that qualified for
21 the credit under this section in the immediately preceding calendar
22 year that earned more than \$250,000.00 on a qualified production
23 and how many of those persons were residents of this state.

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

27 (h) The amount known by the Michigan film office of other

1 state and local assistance provided to eligible production
2 companies in addition to the tax credit under this section.

3 (13) As used in this section:

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

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

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

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

20 (A) Expenditures for optioning or purchasing intellectual
21 property including, but not limited to, books, scripts, music, or
22 trademarks relating to the development or purchase of a script,
23 story, scenario, screenplay, or format, including all expenditures
24 generally associated with the optioning or purchase of intellectual
25 property, including option money, agent fees, and attorney fees
26 relating to the transaction, but not including deferrals,
27 deferments, royalties, profit participation, or recourse or

1 nonrecourse loans negotiated by the eligible production company to
2 obtain the rights to the intellectual property.

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

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

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

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

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

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

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

27 (I) Preproduction, production, or postproduction costs

1 relating to the creation of trailers, marketing videos,
2 commercials, point-of-purchase videos, and content created on film
3 or digital media, including, but not limited to, the duplication of
4 films, videos, compact discs, digital video discs, and digital
5 files or other digital media created for consumer consumption.

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

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

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

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

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

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

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

16 (f) "Michigan film office" or "office" means the Michigan film
17 office created under chapter 2A of the Michigan strategic fund act,
18 1984 PA 270, MCL 125.2029 to 125.2029g.

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

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

24 (i) "Postproduction expenditure" means a direct expenditure
25 for editing, Foley recording, automatic dialogue replacement, sound
26 editing, special or visual effects including computer-generated
27 imagery or other effects, scoring and music editing, beginning and

1 end credits, negative cutting, soundtrack production, dubbing,
2 subtitling, or addition of sound or visual effects. Postproduction
3 expenditure includes direct expenditures for advertising,
4 marketing, distribution, or related expenses.

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

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

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

27 (k) "State certified qualified production" or "qualified

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

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

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

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

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

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

27 (vi) A radio program.

1 (vii) A weather show.

2 (viii) A financial market report.

3 (ix) A talk show.

4 (x) A game show.

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

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

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

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

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

15 (m) "State certified qualified production" means a qualified
16 production for which a postproduction certificate of completion has
17 been issued by the office under subsection (5).

18 Sec. 457. (1) Until September 30, 2015, the Michigan film
19 office, with the concurrence of the state treasurer, may enter into
20 an agreement with a taxpayer providing the taxpayer with a credit
21 against the tax imposed by this act for an investment in a
22 qualified film and digital media infrastructure project, as
23 provided under this section. To qualify for the credit under this
24 section, a taxpayer shall meet all of the following requirements:

25 (a) Before January 1, 2009, invest and expend at least
26 \$100,000.00 for a qualified film and digital media infrastructure
27 project in this state; after December 31, 2008, invest and expend

1 at least \$250,000.00 for a qualified film and digital media
2 infrastructure project in this state.

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

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

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

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

12 (2) ~~For~~ **BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
13 **ADDED THIS LANGUAGE, FOR** investment expenditures made by a taxpayer
14 for all qualified film and digital media infrastructure projects in
15 this state, an agreement under this section may provide for the
16 taxpayer to claim a tax credit equal to 25% of the taxpayer's base
17 investment. **ON AND AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT**
18 **THAT ADDED THIS LANGUAGE, FOR INVESTMENT EXPENDITURES MADE BY A**
19 **TAXPAYER FOR ALL QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE**
20 **PROJECTS IN THIS STATE, AN AGREEMENT UNDER THIS SECTION MAY PROVIDE**
21 **FOR THE TAXPAYER TO CLAIM A TAX CREDIT OF UP TO 25% OF THE**
22 **TAXPAYER'S BASE INVESTMENT AS DETERMINED BY THE MICHIGAN FILM**
23 **OFFICE, WITH THE CONCURRENCE OF THE STATE TREASURER.** The credit
24 under this section shall be reduced by any credit claimed by the
25 taxpayer under section 437 for the same base investment. No more
26 than \$20,000,000.00 in total credits under this section shall be
27 authorized in a tax year. If all or a portion of a qualified film

1 and digital media infrastructure project is a facility that may be
2 used for purposes unrelated to production or postproduction
3 activities, then the project is eligible for the credit only if the
4 department determines that the facility will support and be
5 necessary to secure production or postproduction activity for the
6 production and postproduction facility and the taxpayer agrees to
7 both of the following:

8 (a) The facility will be used as a state of the art production
9 or postproduction facility or as support and component of the
10 facility for the useful life of the facility.

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

13 (3) A taxpayer seeking a credit under this section may submit
14 an application to enter into an agreement under this section to the
15 Michigan film office. The application shall be submitted in a form
16 prescribed by the Michigan film office and shall be accompanied by
17 a \$100.00 application fee and all of the information and records
18 requested by the office. An application fee received by the office
19 under this subsection shall be deposited in the Michigan film
20 promotion fund. The office shall not process the application until
21 it is complete. If the office, with the concurrence of the state
22 treasurer, determines to enter into an agreement under this
23 section, the agreement shall provide for all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (a) The name of the taxpayer.

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

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

16 **(D) THE TAXPAYER'S CREDIT AMOUNT.**

17 **(E)** ~~(d)~~—The unique number assigned to the qualified film and
18 digital media infrastructure project by the office under subsection
19 (3).

20 **(F)** ~~(e)~~—The taxpayer's federal employer identification number
21 or Michigan treasury number.

22 **(G)** ~~(f)~~—Any independent certification required by the
23 department or the Michigan film office.

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

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

9 (7) To claim a credit under this section, a taxpayer shall
10 submit an investment expenditure certificate issued under
11 subsection (5) to the department. If the credit allowed under this
12 section exceeds the amount of taxes owed by the taxpayer under this
13 act for a tax year, that portion of the credit that exceeds the tax
14 liability of the taxpayer for the tax year shall not be refunded
15 but may be carried forward to offset tax liability under this act
16 in subsequent tax years for a period not to exceed 10 tax years or
17 until used up, whichever occurs first.

18 (8) The credit under this section shall be claimed after all
19 other credits under this act. A taxpayer eligible to claim a credit
20 under this section may assign all or a portion of a credit under
21 this section to any assignee. An assignee may subsequently assign a
22 credit or any portion of a credit assigned under this subsection to
23 1 or more assignees. A taxpayer may claim a portion of a credit and
24 assign the remaining credit amount. A credit assignment under this
25 subsection is irrevocable. The credit assignment under this
26 subsection shall be made on a form prescribed by the department. A
27 taxpayer claiming a credit under this section shall send a copy of

1 the completed assignment form to the department in the tax year in
2 which the assignment is made and shall attach a copy of the form to
3 the return on which the credit is claimed.

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

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

15 (11) As used in this section:

16 (a) "Base investment" means the cost, including fabrication
17 and installation, paid or accrued in the taxable year of tangible
18 assets of a type that are, or under the internal revenue code will
19 become, eligible for depreciation, amortization, or accelerated
20 capital cost recovery for federal income tax purposes, provided
21 that the assets are physically located in this state for use in a
22 business activity in this state and are not mobile tangible assets
23 expended by a person in the development of a qualified film and
24 digital media infrastructure project. Base investment does not
25 include a direct production expenditure or qualified personnel
26 expenditure eligible for a credit under section 455.

27 (b) "Michigan film office" or "office" means the Michigan film

1 office created under chapter 2A of the Michigan strategic fund act,
2 1984 PA 270, MCL 125.2029 to 125.2029g.

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

6 (d) "Qualified film and digital media infrastructure project"
7 means a film, video, television, or digital media production and
8 postproduction facility located in this state, movable and
9 immovable property and equipment related to the facility, and any
10 other facility that is a necessary component of the primary
11 facility. A qualified film and digital media infrastructure project
12 does not include a movie theater or other commercial exhibition
13 facility, a facility used to produce obscene matter or an obscene
14 performance as described in 1984 PA 343, MCL 752.361 to 752.374, or
15 a facility used for a production for which records are required to
16 be maintained with respect to any performer in the production under
17 18 USC 2257.

18 Sec. 459. (1) Until September 30, 2015, the Michigan film
19 office, with the concurrence of the state treasurer, may enter into
20 an agreement with an eligible production company providing the
21 company with a credit against the tax imposed by this act for
22 qualified job training expenditures, as provided under this
23 section. To qualify for the credit under this section, a company
24 shall meet all of the following requirements:

25 (a) Make qualified job training expenditures for a state
26 certified qualified production.

27 (b) After completion of the production of the state certified

1 qualified production in this state, submit to the office an
2 application in a form determined by the office with information
3 regarding the qualified job training expenditures, including
4 employment, salary, and related information required by the office.

5 (c) Receive a qualified job training expenditures certificate
6 from the office under subsection (5).

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

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

13 (2) ~~For~~ **BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT**
14 **ADDED THIS LANGUAGE, FOR** a qualified job training expenditure made
15 by a company, the company may claim a tax credit equal to 50% of
16 the qualified job training expenditure. **ON AND AFTER THE EFFECTIVE**
17 **DATE OF THE AMENDATORY ACT THAT ADDED THIS LANGUAGE, FOR A**
18 **QUALIFIED JOB TRAINING EXPENDITURE MADE BY A COMPANY, THE COMPANY**
19 **MAY CLAIM A TAX CREDIT OF UP TO 50% OF THE QUALIFIED JOB TRAINING**
20 **EXPENDITURE AS DETERMINED BY THE MICHIGAN FILM OFFICE, WITH THE**
21 **CONCURRENCE OF THE STATE TREASURER.** A company shall not claim a
22 credit under this section for any of the following:

23 (a) A direct expenditure, or qualified personnel expenditure,
24 for which the company claims a credit under section 455.

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

1 (c) A direct expenditure, or qualified personnel expenditure,
2 for which another taxpayer claims a credit under this section, a
3 credit under section 455, or a credit under section 367 of the
4 income tax act of 1967, 1967 PA 281, MCL 206.367.

5 (3) A taxpayer seeking a credit under this section may submit
6 an application to enter into an agreement under this section to the
7 Michigan film office. The application shall be submitted, prior to
8 making qualified job training expenditures, in a form prescribed by
9 the Michigan film office and shall be accompanied by a \$100.00
10 application fee and all of the information and records requested by
11 the office. An application fee received by the office under this
12 subsection shall be deposited in the Michigan film promotion fund.
13 The office shall not process the application until it is complete.
14 If the office, with the concurrence of the state treasurer,
15 determines to enter into an agreement under this section, the
16 agreement shall provide for all of the following:

17 (a) A unique number assigned to the state certified qualified
18 production for which qualified job training expenditures were
19 incurred by the company.

20 (b) A detailed description of the state certified qualified
21 production and the qualified job training expenditures.

22 (c) A requirement that the company provide the office with the
23 information and independent certification the office and the
24 department deem necessary to verify qualified job training
25 expenditures and eligibility for the credit under this section.

26 (4) In determining whether to authorize a credit under this
27 section, the Michigan film office and the state treasurer shall

1 consider all of the following:

2 (a) The extent to which the state certified qualified
3 production and qualified job training expenditure may have the
4 effect of promoting economic development or job creation in this
5 state.

6 (b) The extent to which the credit may assist in attracting
7 additional private investment for the production of motion
8 pictures, videos, television programs, and digital media in this
9 state.

10 (c) The extent to which the credit will encourage the
11 development of film, video, television, and digital media
12 production and postproduction expertise in this state.

13 (5) If the Michigan film office determines that a company has
14 complied with the terms of an agreement entered into under this
15 section, the office shall issue a qualified job training
16 expenditure certificate to the company. The company shall submit a
17 request to the office for a qualified job training expenditure
18 certificate on a form prescribed by the office, along with any
19 information or independent certification the office or the
20 department deems necessary. The office shall process each request
21 within 60 days after the request is complete. However, the office
22 may request additional information or independent certification
23 before issuing a certificate and need not issue the certificate
24 until satisfied that qualified job training expenditures and
25 eligibility are adequately established. The additional information
26 requested may include a report of expenditures audited and
27 certified by an independent certified public accountant. Each

1 qualified job training expenditure certificate shall be signed by
2 the Michigan film commissioner and shall include the following
3 information:

4 (a) The name of the taxpayer.

5 (b) A description of the state certified qualified production
6 and the qualified job training expenditures.

7 (c) The amount of the company's qualified job training
8 expenditures for the state certified qualified production.

9 (d) The date on which production of the state certified
10 qualified production began in this state, the date on which
11 production of the state certified qualified production ended in
12 this state, the total number of production days in this state, and
13 the approximate total crew size for the state certified qualified
14 production.

15 **(E) THE COMPANY'S CREDIT AMOUNT.**

16 **(F)** ~~(e)~~—The unique number assigned to the state certified
17 qualified production by the office under subsection (3).

18 **(G)** ~~(f)~~—The company's federal employer identification number
19 or Michigan treasury number.

20 **(H)** ~~(g)~~—Any independent certification required by the
21 department or the Michigan film office.

22 (6) Information, records, or other data received, prepared,
23 used, or retained by the Michigan film office under this section
24 that are submitted by an eligible production company and considered
25 by the taxpayer and acknowledged by the office as confidential
26 shall not be subject to the disclosure requirements of the freedom
27 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,

1 records, or other data shall only be considered confidential to the
2 extent that the information or records describe the commercial and
3 financial operations or intellectual property of the company, the
4 information or records have not been publicly disseminated at any
5 time, and disclosure of the information or records may put the
6 company at a competitive disadvantage.

7 (7) To claim a credit under this section, a company shall
8 submit a qualified job training expenditure certificate issued
9 under subsection (5) to the department. If the credit allowed under
10 this section exceeds the amount of taxes owed by the company under
11 this act for a tax year, that portion of the credit that exceeds
12 the tax liability of the company for the tax year shall not be
13 refunded but may be carried forward as a credit against tax
14 liability under this act in subsequent tax years for a period not
15 to exceed 10 tax years.

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

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

1 deposited in the Michigan film production promotion fund.

2 (10) As used in this section:

3 (a) "Below the line crew" means persons employed by an
4 eligible production company for state certified qualified
5 production expenditures made after production begins and before
6 production is completed, including, but not limited to, a best boy,
7 boom operator, camera loader, camera operator, assistant camera
8 operator, compositor, dialogue editor, film editor, assistant film
9 editor, focus puller, Foley operator, Foley editor, gaffer, grip,
10 key grip, lighting crew, lighting board operator, lighting
11 technician, music editor, sound editor, sound effects editor, sound
12 mixer, steadicam operator, first assistant camera operator, second
13 assistant camera operator, digital imaging technician, camera
14 operator working with a director of photography, electric best boy,
15 grip best boy, dolly grip, rigging grip, assistant key for makeup,
16 assistant key for hair, assistant script supervisor, set
17 construction foreperson, lead set dresser, assistant key for
18 wardrobe, scenic foreperson, assistant propmaster, assistant audio
19 mixer, assistant boom person, assistant key for special effects,
20 and other similar personnel. Below the line crew does not include a
21 producer, director, writer, actor, or other similar personnel.

22 (b) "Eligible production company" means that term as defined
23 in section 455.

24 (c) "Michigan film office" or "office" means the Michigan film
25 office created under chapter 2A of the Michigan strategic fund act,
26 1984 PA 270, MCL 125.2029 to 125.2029g.

27 (d) "Michigan film promotion fund" means the fund created

1 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,
2 MCL 125.2029 to 125.2029g.

3 (e) "Qualified job training expenditure" means salary and
4 other expenditures paid by an eligible production company to
5 provide qualified personnel with on-the-job training as a member of
6 the below the line crew for a state certified qualified production
7 that is intended to upgrade or enhance the skills of the qualified
8 personnel and address deficiencies in skills among residents of
9 this state as determined by the office.

10 (f) "Qualified personnel" means a person who has resided in
11 this state for not less than 12 months, who has legal status for
12 employment, and who demonstrates sufficient prior experience or
13 training in the film and digital media industry, as certified by
14 the Michigan film office. Qualified personnel includes, but is not
15 limited to, a person who has completed a training program at a
16 Michigan proprietary school licensed by the department of labor and
17 economic growth that offers a program of instruction in film and
18 video production and has been designated with a classification of
19 instructional programs code of 50 by the department of labor and
20 economic growth and a person in an advanced crew position that
21 meets the residency requirements of this subdivision and is hired
22 and mentored by a key or supervisor. Qualified personnel do not
23 include a person with fewer than 1 or more than 4 film credits in
24 the same below the line crew position for which the eligible
25 production company claimed a credit under this section.

26 (g) "Qualified personnel expenditure" means that term as
27 defined under section 455.

1 (h) "State certified qualified production" means that term as
2 defined in section 455.