

HOUSE BILL No. 5121

October 25, 2011, Introduced by Reps. Johnson, Agema and McMillin and referred to the Committee on Commerce.

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending section 455 (MCL 208.1455), as amended by 2011 PA 77; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 455. (1) ~~The~~**EXCEPT AS OTHERWISE PROVIDED UNDER THIS**
 2 **SUBSECTION, THE** Michigan film office, with the concurrence of the
 3 state treasurer, may enter into an agreement with an eligible
 4 production company providing the company with a credit against the
 5 tax imposed by this act as provided under this section. **THE**
 6 **MICHIGAN FILM OFFICE SHALL NOT ENTER INTO AN AGREEMENT UNDER THIS**
 7 **SECTION AFTER NOVEMBER 1, 2011.** To qualify for the credit under
 8 this section, a company shall meet all of the following
 9 requirements:

10 (a) Spend at least \$50,000.00 in this state for the

1 development, preproduction, production, or postproduction costs of
2 a state certified qualified production.

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

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

6 (d) Submit the postproduction certificate of completion issued
7 by the office under subsection (5) to the department under
8 subsection (8).

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 direct production expenditures or qualified personnel
13 expenditures made after February 29, 2008 and before the effective
14 date of the amendatory act that added this language, an agreement
15 under this section may provide for an eligible production company
16 to claim a tax credit equal to 42% of direct production
17 expenditures for a state certified qualified production in a core
18 community, 40% of direct production expenditures for a state
19 certified qualified production in part of this state other than a
20 core community, and 30% for qualified personnel expenditures. For
21 direct production expenditures or qualified personnel expenditures
22 made on and after the effective date of the amendatory act that
23 added this language, an agreement under this section may provide
24 for an eligible production company to claim a tax credit as
25 determined by the Michigan film office, with the concurrence of the
26 state treasurer, of up to 42% for each separate direct production
27 expenditure for a state certified qualified production in a core

1 community, up to 40% for each separate direct production
2 expenditure for a state certified qualified production in part of
3 this state other than a core community, and up to 30% for each
4 separate qualified personnel expenditure. A taxpayer shall not
5 claim a credit under this section for any of the following:

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

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

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

15 (3) An eligible production company intending to produce a
16 qualified production in this state, or that initiated production of
17 a qualified production after February 29, 2008 and before April 8,
18 2008, may submit an application to enter into an agreement under
19 this section to the Michigan film office. Except for a qualified
20 production for which production was initiated after February 29,
21 2008 and before April 8, 2008, direct production expenditures and
22 qualified personnel expenditures incurred prior to approval of an
23 agreement under this section are not eligible for the credit under
24 this section. The request shall be submitted in a form prescribed
25 by the Michigan film office and shall be accompanied by a \$100.00
26 application fee and all of the information and records requested by
27 the office. An application fee received by the office under this

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

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

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

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

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

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

26 (f) A requirement that the company provide the office with the
27 information and independent certification the office and the

1 department deem necessary to verify direct production expenditures,
2 qualified personnel expenditures, and eligibility for the credit
3 under this section.

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

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

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

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

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

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

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

23 (5) If the Michigan film office determines that an eligible
24 production company has complied with the terms of an agreement
25 entered into under this section, the office shall issue a
26 postproduction certificate of completion to the company. The
27 company shall submit a request to the office for a postproduction

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

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

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

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

22 (d) The eligible production company's credit amount.

23 (e) The date of completion for the qualified production in
24 this state.

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

27 (g) The eligible production company's federal employer

1 identification number or Michigan treasury number.

2 (h) Any independent certification required by the department
3 or the Michigan film office.

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

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

24 (a) The number of applications received for a credit under
25 this section in the immediately preceding 6 months, including the
26 name of the eligible production company that submitted the
27 application and a brief description of the proposed qualified

1 production, including the locations in this state to be used in the
2 production and the proposed amount of money to be expended by the
3 eligible production company to produce the qualified production in
4 this state.

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

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

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

1 director of the house fiscal agency the total amount of the credits
2 certified under this section that exceed the taxpayer's tax
3 liability for the most recent year that tax information is
4 available and for which returns have cleared and been processed.
5 The credit under this section shall be claimed after all other
6 credits under this act.

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

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

23 (11) A taxpayer that willfully submits information under this
24 section that the taxpayer knows to be fraudulent or false shall, in
25 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 promotion fund.

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

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

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

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

27 (d) The number of below the line crew employed in this state

1 by eligible production companies that qualified for the credit
2 under this section in the immediately preceding calendar year, how
3 many of those persons employed were residents of this state and not
4 included in qualified personnel expenditures, and the total number
5 of hours worked on the qualified production for which a credit is
6 granted.

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

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

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

24 (h) The amount known by the Michigan film office of other
25 state and local assistance provided to eligible production
26 companies in addition to the tax credit under this section.

27 (13) As used in this section:

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

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

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

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

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

27 (B) Production work, production equipment, production

1 software, development work, postproduction work, postproduction
2 equipment, postproduction software, set design, set construction,
3 set operations, props, lighting, wardrobe, makeup, makeup
4 accessories, photography, sound synchronization, special effects,
5 visual effects, audio effects, film processing, music, sound
6 mixing, editing, and related services and materials.

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

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

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

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

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

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

24 (I) Preproduction, production, or postproduction costs
25 relating to the creation of trailers, marketing videos,
26 commercials, point-of-purchase videos, and content created on film
27 or digital media, including, but not limited to, the duplication of

1 films, videos, compact discs, digital video discs, and digital
2 files or other digital media created for consumer consumption.

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

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

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

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

15 (B) Payment to a personal services corporation or professional
16 employer organization for the services of a performing artist or
17 crew member if the personal services corporation or professional
18 employer organization is subject to the tax levied under this act
19 on the portion of the payment qualifying for the tax credit under
20 this section and the payments received by the performing artist or
21 crew member that are subject to taxation under the income tax act
22 of 1967, 1967 PA 281, MCL 206.1 to 206.713, and are withheld and
23 paid to this state in the amount provided under section 351 **OR 703**
24 of the income tax act of 1967, 1967 PA 281, MCL 206.351 **AND**
25 **206.703.**

26 (d) "Eligible production company" or "company" means an entity
27 in the business of producing qualified productions, but does not

1 include an entity that is more than 30% owned, affiliated, or
2 controlled by an entity or individual who is in default on a loan
3 made by this state, a loan guaranteed by this state, or a loan made
4 or guaranteed by any other state.

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

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

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

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

22 (i) "Postproduction expenditure" means a direct expenditure
23 for editing, Foley recording, automatic dialogue replacement, sound
24 editing, special or visual effects including computer-generated
25 imagery or other effects, scoring and music editing, beginning and
26 end credits, negative cutting, soundtrack production, dubbing,
27 subtitling, or addition of sound or visual effects. Postproduction

1 expenditure includes direct expenditures for advertising,
2 marketing, distribution, or related expenses.

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

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

15 (ii) Payment to a personal services corporation or professional
16 employer organization for the services of a performing artist or
17 crew member if the personal services corporation or professional
18 employer organization is subject to the tax levied under this act
19 on the portion of the payment qualifying for the tax credit under
20 this section and the payments received by the performing artist or
21 crew member that are subject to taxation under the income tax act
22 of 1967, 1967 PA 281, MCL 206.1 to 206.713, and are withheld and
23 paid to this state in the amount provided under section 351 **OR 703**
24 of the income tax act of 1967, 1967 PA 281, MCL 206.351 **AND**
25 **206.703.**

26 (k) "State certified qualified production" or "qualified
27 production" means single media or multimedia entertainment content

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

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

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

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

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

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

26 (vi) A radio program.

27 (vii) A weather show.

1 (viii) A financial market report.

2 (ix) A talk show.

3 (x) A game show.

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

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

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

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

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

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

17 Enacting section 1. Section 455 of the Michigan business tax
18 act, 2007 PA 36, MCL 208.1455, is repealed effective 180 days after
19 the effective date of this amendatory act.