



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5846 (Substitute H-1 as passed by the House)
Sponsor: Representative Barb Byrum
House Committee: Commerce
Senate Committee: Commerce and Tourism

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CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to allow an MBT credit for a taxpayer who invested at least \$100,000 before 2009, or \$250,000 after 2008, in a qualified film and digital media infrastructure project. The bill would do the following:

- Allow the Michigan Film Office, with the State Treasurer's concurrence, until September 30, 2015, to enter into a tax credit agreement with a taxpayer.
- Allow a taxpayer to claim a credit of 25% of its base investment.
- Limit the total amount of credits authorized in a year to \$20.0 million.
- Require a taxpayer seeking a credit to apply to the Michigan Film Office and pay an application fee.
- Require an agreement between the Office and a taxpayer to contain certain provisions, including a requirement that construction on the project begin within 180 days of the date of the agreement, and a provision that a taxpayer could not claim the credit until at least 25% of the base investment had been spent.
- If a taxpayer had complied with the terms of an agreement, require the Office to issue an investment expenditure certificate, which the taxpayer would have to submit to the Department of Treasury in order to claim a credit.
- Require a credit to be reduced by 0.5% for a credit application and redemption fee.

- Provide that a taxpayer would be liable for a civil penalty equal to the credit if the taxpayer willfully and knowingly submitted false or fraudulent information.
- Require fee revenue and penalties to be deposited in a proposed Michigan Film Promotion Fund.

Credit Criteria

Until September 30, 2015, the Michigan Film Office, with the concurrence of the State Treasurer, could enter into an agreement with a taxpayer providing the taxpayer with an MBT credit for an investment in a qualified film and digital media infrastructure project. To qualify for the credit, the taxpayer would have to meet all of the following requirements:

- Invest and spend at least \$100,000 before January 1, 2009, or at least \$250,000 after December 31, 2008, for a qualified film and digital media infrastructure project in this State.
- Enter into an agreement with the Film Office.
- Receive an investment expenditure certificate from the Office.
- Submit the certificate to the Department of Treasury.

In addition, the taxpayer could not be delinquent in a tax or other obligation owed to this State or be owned by or under common control of an entity that was delinquent in a tax or other obligation owed to the State.

"Qualified film and digital media infrastructure project" would mean a film, video, television, or digital media production and postproduction facility located in this State, movable and immovable property and equipment related to the facility, and any other facility that supports and is a necessary component of the primary facility. The term would not include a movie theater or other commercial exhibition facility.

Credit Amount; Total Credits

For investment expenditures made by a taxpayer for all qualified film and digital media infrastructure projects in this State, an agreement could provide for the taxpayer to claim a tax credit equal to 25% of the taxpayer's base investment. The credit would have to be reduced by any credit claimed for the same base investment under Section 437 of the Act (which allows an MBT credit for qualified taxpayers who have a preapproval letter from the Michigan Economic Growth Authority for certain brownfield projects).

The amount of the credit would have to be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed. The fee would have to be deducted from the credit otherwise payable to the taxpayer claiming it, and be deposited in the Michigan Film Promotion Fund (which House Bill 5850 (H-1) would create).

Not more than \$20.0 million in total credits under the bill could be authorized in a tax year.

"Base investment" would mean the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for Federal income tax purposes, provided that the assets are physically located in Michigan for use in a business activity in this State and are not mobile tangible assets used by a person in the development of a qualified film and digital media infrastructure project. "Base investment" would not include a direct production expenditure or qualified personnel expenditure eligible for a credit under Section 455 of the MBT Act. (House Bill 5841 (H-1) would add that section to allow an MBT or income tax credit for an

eligible production company's direct production expenditures or qualified personnel expenditures.)

Facility

If all or part of a qualified film and digital media infrastructure project were a facility that could be used for purposes unrelated to production or postproduction activities, the project would be eligible for the credit only if the Department determined that the facility would support and be necessary to secure production or postproduction activity for the production and postproduction facility, and the taxpayer agreed to both of the following:

- The facility would be used as a state-of-the-art production or postproduction facility or as support and component of the facility for its useful life.
- A credit would not be claimed under the bill until the facility was complete.

Application & Agreement

A taxpayer seeking a credit under the bill would have to submit to the Film Office an application to enter into an agreement. The application would have to be accompanied by a \$100 application fee and all of the information and records requested by the Office. The fee would have to be deposited in the Michigan Film Promotion Fund. The Office could not process the application until it was complete.

If the Office, with the State Treasurer's concurrence, determined to enter into an agreement, it would have to require that construction on the qualified film and digital media infrastructure project commence within 180 days of the date of the agreement, or the agreement would expire. The Office could extend the period for commencement for an additional 90 days, however, upon the taxpayer's request based on good cause.

The agreement also would have to provide for all of the following:

- A unique number assigned to the project.
- A detailed description of the project.
- A detailed business plan and market analysis for the project.
- A projected budget for the project.
- The project's estimated start date and completion date.

- A requirement that the taxpayer not file a claim for the credit until at least 25% of the base investment in the project had been spent.
- A requirement that the taxpayer give the Office the information and independent certification the Office and the Department considered necessary to verify investment expenditures and eligibility for the credit.

In addition, the agreement would have to provide that if the cost of tangible assets were paid or accrued in a tax year beginning after December 31, 2007, the taxpayer would have to repay "an amount equal to 25% of the gross proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain, multiplied by the apportionment factor for the taxable year..., and plus the loss, multiplied by the apportionment factor for the taxable year...from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the business income tax base".

In determining whether to enter into an agreement, the Film Office and the State Treasurer would have to consider all of the following:

- The potential that, absent the credit, the qualified film and digital media infrastructure project would be constructed in a location other than Michigan.
- The extent to which the project could have the effect of promoting economic development or job creation in Michigan.
- The extent to which the credit would attract private investment for the production of motion pictures, videos, television programs, and digital media in the State.
- The extent to which the credit would encourage the development of film, video, television, and digital media production and postproduction facilities in the State.

Investment Expenditure Certificate

If the Film Office determined that a taxpayer had complied with the terms of an agreement entered into under the bill, the Office would have to issue an investment expenditure certificate to the taxpayer. The

taxpayer would have to submit a request to the Office for a certificate, along with any information or independent certification the Office or the Department considered necessary.

The Office would have to process each request within 60 days after it was submitted. The Office could request additional information or independent certification before issuing a certificate, however, and would not have to issue a certificate until it was satisfied that investment expenditures and eligibility were adequately established. The additional information requested could include a report of expenditures audited and certified by an independent certified public accountant.

Each investment expenditure certificate would have to be signed by the Michigan Film Commissioner and include the following:

- The taxpayer's name.
- A description of the qualified film and digital media infrastructure project.
- The taxpayer's eligible investment expenditures for the project.
- The unique number assigned to the project by the Office.
- The taxpayer's Federal employer ID number or Michigan Treasury number.
- Any independent certification required by the Office or the Department.

Claiming the Credit

To claim a credit under the bill, a taxpayer would have to submit an investment expenditure certificate to the Department. If the credit exceeded the amount of taxes owed by the taxpayer under the Act for a tax year, the excess could not be refunded but could be carried forward to offset MBT liability for up to 10 subsequent tax years or until it was used up, whichever occurred first.

The credit would have to be claimed after all other credits under the Act.

A taxpayer eligible to claim a credit could assign all or part of the credit to any assignee, who could subsequently assign all or part of a credit to one or more assignees. A taxpayer could claim a portion of the credit and assign the remainder. An assignment would be irrevocable.

A credit assignment would have to be made on a form prescribed by the Department. A taxpayer claiming a credit would have to send a copy of the completed assignment form to the Department in the tax year in which the assignment was made and attach a copy of the form to the return on which the credit was claimed.

Confidentiality

Information, records, and other data received, prepared, used, or retained by the Michigan Film Office that were submitted by an eligible production company and considered by the taxpayer and acknowledged by the Film Office as confidential, would not be subject to the disclosure requirements of the Freedom of Information Act. Information, records, or other data would be considered confidential only extent that the information or records described the commercial and financial operations or intellectual property of the company, the information or records had not been publicly disseminated at any time, and disclosure could put the company at a competitive disadvantage.

Penalty

If a taxpayer willfully submitted information under the bill that the taxpayer knew was fraudulent or false, the taxpayer would be liable for a civil penalty equal to the amount of the credit, in addition to any other penalties provided by law. The penalty would have to be deposited in the Michigan Film Promotion Fund.

Proposed MCL 208.1457

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would decrease State General Fund revenue by an unknown amount, depending on the investments affected and the number of agreements the State entered into. However, a maximum of \$20.0 million in credits could be awarded to taxpayers in a given year. Credits under the bill would be nonrefundable, but could be carried forward for up to 10 years or transferred. If transferred, it is unlikely the bill would ever reduce revenue by more than \$20.0 million in any year. To the extent that credits were carried forward, however, the carry-forward

provision could result in more than \$20.0 million in credits being claimed in any given tax year.

While not tie-barred to other bills affecting similar taxpayers, the bill would not exclude certain expenditures eligible for credits under the other bills but would preclude expenditures from also being used against brownfield credits under the Michigan Business Tax Act. Generally, taxpayers would be assumed to pursue the combination of credits and expenditures that would minimize their total tax liability. The circumstances affecting that combination are likely to vary from taxpayer to taxpayer. The bill would not prevent expenditures related to the bill from also being eligible for credits under the other bills or elsewhere under the Michigan Business Tax Act, such as the investment tax credit. As a result, business activity generating a credit under the bill also could generate credit activity under the related bills or other provisions of existing law.

According to data from the Michigan Film Office, eight movies have been filmed in Michigan in the last two years. If all eight films had applied for the credit proposed in the bill in the same year, the bill would have increased revenue by \$800. The State also would have received 0.5% of credits claimed as a "credit redemption fee". Revenue from both the credit and the credit redemption fee would be deposited in the Michigan Film Promotion Fund.

Expenditures that would qualify for the credit would be only for expenditures of \$250,000 or more for a project located in Michigan, or \$100,000 or more if expenditures were made before 2009. Compensation costs often average approximately 50% of a film's production costs, but the share of total costs that reflect investment in tangible assets is unknown. A firm that had \$1.0 million of eligible expenditures on a qualified project would receive a credit of \$250,000.

Fiscal Analyst: David Zin

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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.