

HOUSE BILL No. 5249

August 19, 2009, Introduced by Rep. Lund and referred to the Committee on Families and Children's Services.

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 added by 2008 PA 77, section 457 as added by 2008 PA 86, and section 459 as added by 2008 PA 74; 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 or against taxes withheld under chapter 7
6 of the income tax act of 1967, 1967 PA 281, MCL 206.351 to 206.367,

1 as provided under this section and section 367 of the income tax
2 act of 1967, 1967 PA 281, MCL 206.367. **THE MICHIGAN FILM OFFICE**
3 **SHALL NOT ENTER INTO AN AGREEMENT UNDER THIS SECTION AFTER**
4 **SEPTEMBER 30, 2009.** To qualify for the credit under this section, a
5 company shall meet all of the following requirements:

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

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

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

12 (d) Submit the postproduction certificate of completion issued
13 by the office under subsection (5) to the department under
14 subsection (7).

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

18 (2) For direct production expenditures or qualified personnel
19 expenditures made after February 29, 2008, an agreement under this
20 section may provide for an eligible production company to claim a
21 tax credit equal to 42% of direct production expenditures for a
22 state certified qualified production in a core community, 40% of
23 direct production expenditures for a state certified qualified
24 production in part of this state other than a core community, and
25 30% for qualified personnel expenditures. A taxpayer shall not
26 claim a credit under this section for any of the following:

27 (a) A direct expenditure, or qualified personnel expenditure,

1 for which the company claims a credit under section 459.

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

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

9 (3) An eligible production company intending to produce a
10 qualified production in this state, or that initiated production of
11 a qualified production after February 29, 2008 and before ~~the~~
12 ~~effective date of the amendatory act that added this section~~ **APRIL**
13 **8, 2008**, may submit an application to enter into an agreement under
14 this section to the Michigan film office. Except for a qualified
15 production for which production was initiated after February 29,
16 2008 and before ~~the effective date of the amendatory act that added~~
17 ~~this section~~ **APRIL 8, 2008**, direct production expenditures and
18 qualified personnel expenditures incurred prior to approval of an
19 agreement under this section are not eligible for the credit under
20 this section. The request shall be submitted in a form prescribed
21 by the Michigan film office and shall be accompanied by a \$100.00
22 application fee and all of the information and records requested by
23 the office. An application fee received by the office under this
24 subsection shall be deposited in the Michigan film promotion fund.
25 The office shall not process the application until it is complete.
26 As part of the application, the company shall estimate direct
27 production expenditures and qualified personnel expenditures for an

1 identified qualified production. If the office, with the
2 concurrence of the state treasurer, determines to enter into an
3 agreement under this section, the agreement shall provide for all
4 of the following:

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

11 (b) A statement identifying the company and the qualified
12 production that the company intends to produce in whole or in part
13 in this state.

14 (c) A unique number assigned to the qualified production by
15 the office.

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

18 (e) If the qualified production is a long-form narrative film
19 production, a requirement that the qualified production include an
20 acknowledgement that the qualified production was filmed in this
21 state.

22 (f) 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 direct production expenditures,
25 qualified personnel expenditures, and eligibility for the credit
26 under this section.

27 (g) If determined to be necessary by the office and the state

1 treasurer, a provision for addressing expenditures in excess of
2 those identified in the agreement.

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

6 (a) The potential that in the absence of the credit the
7 qualified production will be produced in a location other than this
8 state.

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

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

14 (d) The extent to which the credit will attract private
15 investment for the production of qualified productions in this
16 state.

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

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

1 or independent certification before issuing a postproduction
2 certificate of completion and need not issue the postproduction
3 certificate until satisfied that direct production expenditures,
4 qualified personnel expenditures, and eligibility are adequately
5 established. The additional information requested may include a
6 report of direct production expenditures and qualified personnel
7 expenditures for the qualified production audited and certified by
8 an independent certified public accountant. Each postproduction
9 certificate of completion shall be signed by the Michigan film
10 commissioner and shall include the following information:

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

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

14 (c) The eligible production company's direct production
15 expenditures and qualified personnel expenditures for the qualified
16 production.

17 (d) The date of completion for the qualified production in
18 this state.

19 (e) The unique number assigned to the qualified production
20 project by the Michigan film office under subsection (3).

21 (f) The eligible production company's federal employer
22 identification number or Michigan treasury number.

23 (g) Any independent certification required by the department
24 or the Michigan film office.

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

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

10 (7) An eligible production company shall submit a
11 postproduction certificate of completion issued under subsection
12 (5) to the department. If the credit allowed under this section
13 exceeds the tax liability of the company for the tax year or if the
14 company claiming the credit does not have a tax liability under
15 this act for the tax year, the department shall refund the excess
16 or pay the amount of the credit to the company. The credit under
17 this section shall be claimed after all other credits under this
18 act.

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

1 which the assignment is made and shall attach a copy of the form to
2 the return on which the credit is claimed.

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

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

14 (11) Not later than March 1 of ~~each year after 2008~~ **2009 AND**
15 **2010**, the Michigan film office shall submit to the governor, the
16 president of the Michigan strategic fund, the chairperson of the
17 senate finance committee, and the house tax policy committee an
18 annual report concerning the operation and effectiveness of the
19 credit under this section **FOR THE IMMEDIATELY PRECEDING YEAR**. The
20 requirements of section 28(1)(f) of 1941 PA 122, MCL 205.28, do not
21 apply to disclosure of tax information required by this subsection.
22 The report shall include all of the following:

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

26 (b) The number of qualified productions for which the eligible
27 production company applied for a tax credit under this section

1 during the immediately preceding year, the names of the qualified
2 productions produced in this state for which credits were begun or
3 completed in the immediately preceding year, and the locations in
4 this state that were used in the production of qualified
5 productions in the immediately preceding calendar year.

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

11 (d) An estimate of the number of persons employed in this
12 state by eligible production companies that qualified for the
13 credit under this section in the immediately preceding calendar
14 year.

15 (e) The value of all tax credit certificates of completion
16 issued under this section in the immediately preceding calendar
17 year.

18 (12) As used in this section:

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

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

24 (c) "Direct production expenditure" means a development,
25 preproduction, production, or postproduction expenditure made in
26 this state that is not a qualified personnel expenditure directly
27 attributable to the production or distribution of a qualified

1 production that is a transaction subject to taxation in this state,
2 including, but not limited to, all of the following:

3 (i) Payments to vendors doing business in this state to
4 purchase or use tangible personal property in producing or
5 distributing the qualified production or to purchase services
6 relating to the production or distribution of the qualified
7 production, including all of the following:

8 (A) Expenditures for optioning or purchasing intellectual
9 property including, but not limited to, books, scripts, music, or
10 trademarks relating to the development or purchase of a script,
11 story, scenario, screenplay, or format, including all expenditures
12 generally associated with the optioning or purchase of intellectual
13 property, including option money, agent fees, and attorney fees
14 relating to the transaction, but not including deferrals,
15 deferments, royalties, profit participation, or recourse or
16 nonrecourse loans negotiated by the eligible production company to
17 obtain the rights to the intellectual property.

18 (B) Production work, production equipment, production
19 software, development work, postproduction work, postproduction
20 equipment, postproduction software, set design, set construction,
21 set operations, props, lighting, wardrobe, makeup, makeup
22 accessories, photography, sound synchronization, special effects,
23 visual effects, audio effects, film processing, music, sound
24 mixing, editing, and related services and materials.

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

27 (D) Catering, food, lodging, and related services and

1 materials.

2 (E) Use of vehicles, which may include chartered aircraft
3 based in this state used for transportation in this state directly
4 attributable to production of a qualified production, but may not
5 include the chartering of aircraft for transportation outside of
6 this state.

7 (F) Commercial airfare if purchased through a travel agency or
8 travel company based in this state for travel to and from this
9 state or within this state directly attributable to production or
10 distribution of a qualified production.

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

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

15 (I) Preproduction, production, or postproduction costs
16 relating to the creation of trailers, marketing videos,
17 commercials, point-of-purchase videos, and content created on film
18 or digital media, including, but not limited to, the duplication of
19 films, videos, compact discs, digital video discs, and digital
20 files or other digital media created for consumer consumption.

21 (II) Purchase of equipment relating to the duplication or
22 market distribution of any content created or produced in this
23 state.

24 (I) Other expenditures for production of a qualified
25 production in accordance with generally accepted entertainment
26 industry practices.

27 (ii) Payments and compensation, not to exceed \$2,000,000.00 for

1 any 1 employee or contractual or salaried employee who performs
2 services in this state for the production or distribution of a
3 qualified production, including all of the following:

4 (A) Payment of wages, benefits, or fees for talent,
5 management, or labor.

6 (B) Payment to a personal services corporation or professional
7 employer organization for the services of a performing artist or
8 crew member if the personal services corporation or professional
9 employer organization is subject to the tax levied under this act
10 on the portion of the payment qualifying for the tax credit under
11 this section and the payments received by the performing artist or
12 crew member that are subject to taxation under the income tax act
13 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and
14 paid to this state in the amount provided under section 351 of the
15 income tax act of 1967, 1967 PA 281, MCL 206.351.

16 (d) "Eligible production company" or "company" means an entity
17 in the business of producing qualified productions, but does not
18 include an entity that is more than 30% owned, affiliated, or
19 controlled by an entity or individual who is in default on a loan
20 made by this state, a loan guaranteed by this state, or a loan made
21 or guaranteed by any other state.

22 (e) "Interactive website" means a website, the production
23 costs of which exceed \$500,000.00 in an annual period and primarily
24 includes interactive games, end user applications, animation,
25 simulation, sound, graphics, story lines, or video created or
26 repurposed for distribution over the internet. Interactive website
27 does not include a website primarily used for institutional,

1 private, industrial, retail, or wholesale marketing or promotional
2 purposes, or which contains obscene matter or an obscene
3 performance.

4 (f) "Michigan film office" or "office" means the Michigan film
5 office created under chapter 2A of the Michigan strategic fund act,
6 1984 PA 270, MCL 125.2029 to 125.2029g.

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

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

12 (i) "Postproduction expenditure" means a direct expenditure
13 for editing, Foley recording, automatic dialogue replacement, sound
14 editing, special or visual effects including computer-generated
15 imagery or other effects, scoring and music editing, beginning and
16 end credits, negative cutting, soundtrack production, dubbing,
17 subtitling, or addition of sound or visual effects. Postproduction
18 expenditure includes direct expenditures for advertising,
19 marketing, distribution, or related expenses.

20 (j) "Qualified personnel expenditure" means an expenditure
21 made in this state directly attributable to the production or
22 distribution of a qualified production that is a transaction
23 subject to taxation in this state and is a payment or compensation
24 payable to below the line crew for below the line crew members who
25 were not residents of this state for at least 60 days before
26 approval of the agreement for the qualified production under
27 subsection (3), not to exceed \$2,000,000.00 for any 1 employee or

1 contractual or salaried employee who performs service in this state
2 for the production of a qualified production, including both of the
3 following:

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

5 (ii) Payment to a personal services corporation or professional
6 employer organization for the services of a performing artist or
7 crew member if the personal services corporation or professional
8 employer organization is subject to the tax levied under this act
9 on the portion of the payment qualifying for the tax credit under
10 this section and the payments received by the performing artist or
11 crew member that are subject to taxation under the income tax act
12 of 1967, 1967 PA 281, MCL 206.1 to 206.532, and are withheld and
13 paid to this state in the amount provided under section 351 of the
14 income tax act of 1967, 1967 PA 281, MCL 206.351.

15 (k) "State certified qualified production" or "qualified
16 production" means single media or multimedia entertainment content
17 created in whole or in part in this state for distribution or
18 exhibition to the general public in 2 or more states by any means
19 and media in any digital media format, film, or video tape,
20 including, but not limited to, a motion picture, a documentary, a
21 television series, a television miniseries, a television special,
22 interstitial television programming, long-form television,
23 interactive television, music videos, interactive games, video
24 games, commercials, internet programming, an internet video, a
25 sound recording, a video, digital animation, or an interactive
26 website. Qualified production also includes any trailer, pilot,
27 video teaser, or demo created primarily to stimulate the sale,

1 marketing, promotion, or exploitation of future investment in a
2 production. Qualified production does not include any of the
3 following:

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

7 (ii) A production that includes obscene matter or an obscene
8 performance.

9 (iii) A production that primarily consists of televised news or
10 current events.

11 (iv) A production that primarily consists of a live sporting
12 event.

13 (v) A production that primarily consists of political
14 advertising.

15 (vi) A radio program.

16 (vii) A weather show.

17 (viii) A financial market report.

18 (ix) A talk show.

19 (x) A game show.

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

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

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

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

26 (l) "Sound recording" means a recording of music, poetry, or
27 spoken-word performance, but does not include the audio portions

1 spoken and recorded as part of a motion picture, video, theatrical
2 production, television news coverage, or athletic event.

3 (m) "State certified qualified production" means a qualified
4 production for which a postproduction certificate has been issued
5 by the office under subsection (5).

6 Sec. 457. (1) Until September 30, ~~2015~~2009, the Michigan film
7 office, with the concurrence of the state treasurer, may enter into
8 an agreement with a taxpayer providing the taxpayer with a credit
9 against the tax imposed by this act for an investment in a
10 qualified film and digital media infrastructure project, as
11 provided under this section. To qualify for the credit under this
12 section, a taxpayer shall meet all of the following requirements:

13 (a) Before January 1, 2009, invest and expend at least
14 \$100,000.00 for a qualified film and digital media infrastructure
15 project in this state; after December 31, 2008, invest and expend
16 at least \$250,000.00 for a qualified film and digital media
17 infrastructure project in this state.

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

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

21 (d) Submit the investment expenditure certificate issued by
22 the office under subsection (5) to the department under subsection
23 (7).

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

27 (2) For investment expenditures made by a taxpayer for all

1 qualified film and digital media infrastructure projects in this
2 state, an agreement under this section may provide for the taxpayer
3 to claim a tax credit equal to 25% of the taxpayer's base
4 investment. The credit under this section shall be reduced by any
5 credit claimed by the taxpayer under section 437 for the same base
6 investment. No more than \$20,000,000.00 in total credits under this
7 section shall be authorized in a tax year. If all or a portion of a
8 qualified film and digital media infrastructure project is a
9 facility that may be used for purposes unrelated to production or
10 postproduction activities, then the project is eligible for the
11 credit only if the department determines that the facility will
12 support and be necessary to secure production or postproduction
13 activity for the production and postproduction facility and the
14 taxpayer agrees to both of the following:

15 (a) The facility will be used as a state of the art production
16 or postproduction facility or as support and component of the
17 facility for the useful life of the facility.

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

20 (3) A taxpayer seeking a credit under this section may submit
21 an application to enter into an agreement under this section to the
22 Michigan film office. The application shall be submitted in a form
23 prescribed by the Michigan film office and shall be accompanied by
24 a \$100.00 application fee and all of the information and records
25 requested by the office. An application fee received by the office
26 under this subsection shall be deposited in the Michigan film
27 promotion fund. The office shall not process the application until

1 it is complete. If the office, with the concurrence of the state
2 treasurer, determines to enter into an agreement under this
3 section, the agreement shall provide for all of the following:

4 (a) A requirement that construction on the qualified film and
5 digital media infrastructure project commence within 180 days of
6 the date of the agreement or else the agreement shall expire.

7 However, upon request submitted by the taxpayer based on good
8 cause, the office may extend the period for commencement of work
9 for up to an additional 90 days.

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

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

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

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

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

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

24 (h) A requirement that the taxpayer provide the office with
25 the information and independent certification the office and the
26 department deem necessary to verify investment expenditures and
27 eligibility for the credit under this section.

1 (i) A requirement that if the cost of tangible assets
2 described in subsection (11)(a) was paid or accrued in a tax year
3 beginning after December 31, 2007, the taxpayer shall repay an
4 amount equal to 25% of the gross proceeds or benefit derived from
5 the sale or other disposition of the tangible assets minus the
6 gain, multiplied by the apportionment factor for the taxable year
7 as prescribed in chapter 3, and plus the loss, multiplied by the
8 apportionment factor for the taxable year as prescribed in chapter
9 3 from the sale or other disposition reflected in federal taxable
10 income and minus the gain from the sale or other disposition added
11 to the business income tax base in section 201.

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

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

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

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

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

27 (5) If the Michigan film office determines that a taxpayer has

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

18 (a) The name of the taxpayer.

19 (b) A description of the qualified film and digital media
20 infrastructure project.

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

23 (d) The unique number assigned to the qualified film and
24 digital media infrastructure project by the office under subsection
25 (3).

26 (e) The taxpayer's federal employer identification number or
27 Michigan treasury number.

1 (f) Any independent certification required by the department
2 or the Michigan film office.

3 (6) Information, records, or other data received, prepared,
4 used, or retained by the Michigan film office under this section
5 that are submitted by an eligible production company and considered
6 by the taxpayer and acknowledged by the office as confidential
7 shall not be subject to the disclosure requirements of the freedom
8 of information act, 1976 PA 442, MCL 15.231 to 15.246. Information,
9 records, or other data shall only be considered confidential to the
10 extent that the information or records describe the commercial and
11 financial operations or intellectual property of the company, the
12 information or records have not been publicly disseminated at any
13 time, and disclosure of the information or records may put the
14 company at a competitive disadvantage.

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

24 (8) The credit under this section shall be claimed after all
25 other credits under this act. A taxpayer eligible to claim a credit
26 under this section may assign all or a portion of a credit under
27 this section to any assignee. An assignee may subsequently assign a

1 credit or any portion of a credit assigned under this subsection to
2 1 or more assignees. A taxpayer may claim a portion of a credit and
3 assign the remaining credit amount. A credit assignment under this
4 subsection is irrevocable. The credit assignment under this
5 subsection shall be made on a form prescribed by the department. A
6 taxpayer claiming a credit under this section shall send a copy of
7 the completed assignment form to the department in the tax year in
8 which the assignment is made and shall attach a copy of the form to
9 the return on which the credit is claimed.

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

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

21 (11) As used in this section:

22 (a) "Base investment" means the cost, including fabrication
23 and installation, paid or accrued in the taxable year of tangible
24 assets of a type that are, or under the internal revenue code will
25 become, eligible for depreciation, amortization, or accelerated
26 capital cost recovery for federal income tax purposes, provided
27 that the assets are physically located in this state for use in a

1 business activity in this state and are not mobile tangible assets
2 expended by a person in the development of a qualified film and
3 digital media infrastructure project. Base investment does not
4 include a direct production expenditure or qualified personnel
5 expenditure eligible for a credit under section 455.

6 (b) "Michigan film office" or "office" means the Michigan film
7 office created under chapter 2A of the Michigan strategic fund act,
8 1984 PA 270, MCL 125.2029 to 125.2029g.

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

12 (d) "Qualified film and digital media infrastructure project"
13 means a film, video, television, or digital media production and
14 postproduction facility located in this state, movable and
15 immovable property and equipment related to the facility, and any
16 other facility that is a necessary component of the primary
17 facility. A qualified film and digital media infrastructure project
18 does not include a movie theater or other commercial exhibition
19 facility, a facility used to produce obscene matter or an obscene
20 performance as described in 1984 PA 343, MCL 752.361 to 752.374, or
21 a facility used for a production for which records are required to
22 be maintained with respect to any performer in the production under
23 18 USC 2257.

24 Sec. 459. (1) Until September 30, ~~2015~~—2009, the Michigan film
25 office, with the concurrence of the state treasurer, may enter into
26 an agreement with an eligible production company providing the
27 company with a credit against the tax imposed by this act for

1 qualified job training expenditures, as provided under this
2 section. To qualify for the credit under this section, a company
3 shall meet all of the following requirements:

4 (a) Make qualified job training expenditures for a state
5 certified qualified production.

6 (b) After completion of the production of the state certified
7 qualified production in this state, submit to the office an
8 application in a form determined by the office with information
9 regarding the qualified job training expenditures, including
10 employment, salary, and related information required by the office.

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

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

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

19 (2) For a qualified job training expenditure made by a
20 company, the company may claim a tax credit equal to 50% of the
21 qualified job training expenditure. 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 unique number assigned to the state certified
16 qualified production by the office under subsection (3).

17 (f) The company's federal employer identification number or
18 Michigan treasury number.

19 (g) Any independent certification required by the department
20 or the Michigan film office.

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

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

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

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

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

1 (10) As used in this section:

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

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

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

26 (d) "Michigan film promotion fund" means the fund created
27 under chapter 2A of the Michigan strategic fund act, 1984 PA 270,

1 MCL 125.2029 to 125.2029g.

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

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

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

27 (h) "State certified qualified production" means that term as

1 defined in section 455.

2 Enacting section 1. Sections 455, 457, and 459 of the Michigan
3 business tax act, 2007 PA 36, MCL 208.1455, 208.1457, and 208.1459,
4 are repealed effective December 31, 2010.