

# 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.