

SENATE BILL No. 539

May 5, 2009, Introduced by Senators RICHARDVILLE, GILBERT, STAMAS and ALLEN and referred to the Committee on Commerce and Tourism.

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
by amending section 457 (MCL 208.1457), as added by 2008 PA 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

8 (a) Before January 1, 2009, invest and expend at least

1 \$100,000.00 for a qualified film and digital media infrastructure
2 project in this state; after December 31, 2008, invest and expend
3 at least \$250,000.00 for a qualified film and digital media
4 infrastructure project in this state.

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

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

8 (d) Submit the investment expenditure certificate issued by
9 the office under subsection (5) to the department under subsection
10 (7).

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

14 (2) For investment expenditures made by a taxpayer for all
15 qualified film and digital media infrastructure projects in this
16 state, an agreement under this section may provide for the taxpayer
17 to claim a tax credit equal to 25% of the taxpayer's base
18 investment. The credit under this section shall be reduced by any
19 credit claimed by the taxpayer under section 437 for the same base
20 investment. No more than \$20,000,000.00 in total credits under this
21 section shall be authorized in a tax year. If all or a portion of a
22 qualified film and digital media infrastructure project is a
23 facility that may be used for purposes unrelated to production or
24 postproduction activities, then the project is eligible for the
25 credit only if the department determines that the facility will
26 support and be necessary to secure production or postproduction
27 activity for the production and postproduction facility and the

1 taxpayer agrees to both of the following:

2 (a) The facility will be used as a state of the art production
3 or postproduction facility or as support and component of the
4 facility for the useful life of the facility.

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

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

18 (a) A requirement that construction on the qualified film and
19 digital media infrastructure project commence within 180 days of
20 the date of the agreement or else the agreement shall expire.
21 However, upon request submitted by the taxpayer based on good
22 cause, the office may extend the period for commencement of work
23 for up to an additional 90 days.

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

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

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

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

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

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

11 (h) A requirement that the taxpayer provide the office with
12 the information and independent certification the office and the
13 department deem necessary to verify investment expenditures and
14 eligibility for the credit under this section.

15 (i) A requirement that if the cost of tangible assets
16 described in subsection ~~(11)(a)~~ **(12)(A)** was paid or accrued in a
17 tax year beginning after December 31, 2007, the taxpayer shall
18 repay an amount equal to 25% of the gross proceeds or benefit
19 derived from the sale or other disposition of the tangible assets
20 minus the gain, multiplied by the apportionment factor for the
21 taxable year as prescribed in chapter 3, and plus the loss,
22 multiplied by the apportionment factor for the taxable year as
23 prescribed in chapter 3 from the sale or other disposition
24 reflected in federal taxable income and minus the gain from the
25 sale or other disposition added to the business income tax base in
26 section 201.

27 **(J) BEGINNING JULY 1, 2009, A REQUIREMENT THAT THE TAXPAYER**

1 WILL NOT KNOWINGLY HIRE OR CONTRACT WITH ANY BUSINESS ENTITY THAT
2 KNOWINGLY HIRES AN INDIVIDUAL WHO IS NOT AUTHORIZED UNDER FEDERAL
3 LAW TO WORK IN THE UNITED STATES.

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

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

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

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

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

19 (E) BEGINNING JULY 1, 2009, IF ALL OTHER CONSIDERATIONS ARE
20 EQUAL, THE MICHIGAN FILM OFFICE AND THE STATE TREASURER SHALL GIVE
21 PREFERENCE TO A TAXPAYER THAT AGREES, IN WRITING, TO DO ALL OF THE
22 FOLLOWING:

23 (i) HIRE ONLY RESIDENTS OF THIS STATE OR INDIVIDUALS WHO PLAN
24 ON BECOMING RESIDENTS OF THIS STATE TO CONSTRUCT, REHABILITATE,
25 DEVELOP, OR RENOVATE A QUALIFIED FILM AND DIGITAL MEDIA
26 INFRASTRUCTURE PROJECT THAT IS A FACILITY UNLESS THE MICHIGAN FILM
27 OFFICE AND THE STATE TREASURER DETERMINE THAT THE QUALIFIED FILM

1 AND DIGITAL MEDIA INFRASTRUCTURE PROJECT CANNOT BE COMPLETED BY
2 USING ONLY RESIDENTS OF THIS STATE OR INDIVIDUALS WHO PLAN ON
3 BECOMING RESIDENTS OF THIS STATE FOR 1 OR MORE OF THE FOLLOWING:

4 (A) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
5 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

6 (B) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
7 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE
8 NEEDED.

9 (C) HOWEVER, FOR QUALIFIED FILM AND DIGITAL MEDIA
10 INFRASTRUCTURE PROJECTS LOCATED IN A COUNTY THAT BORDERS ON ANOTHER
11 STATE, IF THE AUTHORITY DETERMINES THAT THE USE OF NONRESIDENTS FOR
12 THE CONSTRUCTION, REHABILITATION, DEVELOPMENT, OR RENOVATION WILL
13 NOT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE EMPLOYMENT OF
14 RESIDENTS IN THIS STATE.

15 (ii) CONTRACT WITH BUSINESSES THAT AGREE TO HIRE ONLY RESIDENTS
16 OF THIS STATE OR INDIVIDUALS WHO PLAN ON BECOMING RESIDENTS OF THIS
17 STATE TO CONSTRUCT, REHABILITATE, DEVELOP, OR RENOVATE A QUALIFIED
18 FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT THAT IS A FACILITY
19 UNLESS THE MICHIGAN FILM OFFICE AND THE STATE TREASURER DETERMINE
20 THAT THE QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECT
21 CANNOT BE COMPLETED BY USING ONLY RESIDENTS OF THIS STATE OR
22 INDIVIDUALS WHO PLAN ON BECOMING RESIDENTS OF THIS STATE FOR 1 OR
23 MORE OF THE FOLLOWING:

24 (A) TO THE EXTENT NECESSARY TO COMPLY WITH FEDERAL LAW OR
25 REGULATION CONCERNING THE USE OF FEDERAL FUNDS.

26 (B) TO THE EXTENT THAT KEY MANAGEMENT PERSONNEL OR INDIVIDUALS
27 WITH SPECIAL SKILLS, WHO ARE NOT RESIDENTS OF THIS STATE, ARE

1 NEEDED.

2 (C) HOWEVER, FOR QUALIFIED FILM AND DIGITAL MEDIA
3 INFRASTRUCTURE PROJECTS LOCATED IN A COUNTY THAT BORDERS ON ANOTHER
4 STATE, IF THE AUTHORITY DETERMINES THAT THE USE OF NONRESIDENTS FOR
5 THE CONSTRUCTION, REHABILITATION, DEVELOPMENT, OR RENOVATION WILL
6 NOT HAVE A SIGNIFICANT ADVERSE EFFECT ON THE EMPLOYMENT OF
7 RESIDENTS IN THIS STATE.

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

26 (a) The name of the taxpayer.

27 (b) A description of the qualified film and digital media

1 infrastructure project.

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

4 (d) The unique number assigned to the qualified film and
5 digital media infrastructure project by the office under subsection
6 (3).

7 (e) The taxpayer's federal employer identification number or
8 Michigan treasury number.

9 (f) Any independent certification required by the department
10 or the Michigan film office.

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

23 (7) To claim a credit under this section, a taxpayer shall
24 submit an investment expenditure certificate issued under
25 subsection (5) to the department. If the credit allowed under this
26 section exceeds the amount of taxes owed by the taxpayer under this
27 act for a tax year, that portion of the credit that exceeds the tax

1 liability of the taxpayer for the tax year shall not be refunded
2 but may be carried forward to offset tax liability under this act
3 in subsequent tax years for a period not to exceed 10 tax years or
4 until used up, whichever occurs first.

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

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

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

1 deposited in the Michigan film production promotion fund.

2 (11) THE MICHIGAN FILM OFFICE SHALL REPORT TO THE BOARD OF THE
3 MICHIGAN STRATEGIC FUND BY MARCH 1, 2011 AND MARCH 1 EACH YEAR
4 AFTER 2011 REGARDING AGREEMENTS UNDER THIS SECTION ENTERED INTO ON
5 AND AFTER JULY 1, 2009. THE REPORT SHALL INCLUDE, BUT IS NOT
6 LIMITED TO, THE FOLLOWING:

7 (A) THE NUMBER OF MICHIGAN RESIDENTS EMPLOYED IN JOBS CREATED
8 BY THE CONSTRUCTION, REHABILITATION, DEVELOPMENT, OR RENOVATION OF
9 QUALIFIED FILM AND DIGITAL MEDIA INFRASTRUCTURE PROJECTS IN THE
10 IMMEDIATELY PRECEDING YEAR.

11 (B) THE TOTAL NUMBER OF JOBS CREATED BY THE CONSTRUCTION,
12 REHABILITATION, DEVELOPMENT, OR RENOVATION OF QUALIFIED FILM AND
13 DIGITAL MEDIA INFRASTRUCTURE PROJECTS IN THE IMMEDIATELY PRECEDING
14 YEAR.

15 (C) THE SPECIFIC REASONS FOR EACH DETERMINATION OF EXEMPTION
16 FROM THE PROVISIONS OF SUBSECTION (4) (E) (i) OR (ii) MADE BY THE
17 MICHIGAN FILM OFFICE AND THE STATE TREASURER AND THE NUMBER OF JOBS
18 RELATED TO EACH DETERMINATION.

19 (12) ~~(11)~~ As used in this section:

20 (a) "Base investment" means the cost, including fabrication
21 and installation, paid or accrued in the taxable year of tangible
22 assets of a type that are, or under the internal revenue code will
23 become, eligible for depreciation, amortization, or accelerated
24 capital cost recovery for federal income tax purposes, provided
25 that the assets are physically located in this state for use in a
26 business activity in this state and are not mobile tangible assets
27 expended by a person in the development of a qualified film and

1 digital media infrastructure project. Base investment does not
2 include a direct production expenditure or qualified personnel
3 expenditure eligible for a credit under section 455.

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