

Act No. 86
Public Acts of 2008
Approved by the Governor
April 7, 2008
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April 8, 2008
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senators Clarke, Allen, Van Woerkom, Kuipers, Birkholz, Stamas, Brown, Gilbert, Jansen, Hardiman, McManus, Pappageorge, Richardville, Jelinek, Kahn, George, Garcia, Jacobs, Cherry, Whitmer, Prusi, Gleason, Barcia, Thomas, Anderson, Schauer, Hunter and Olshove

ENROLLED SENATE BILL No. 1173

AN ACT to amend 2007 PA 36, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement of taxes on certain commercial, business, and financial activities; to prescribe the powers and duties of public officers and state departments; to provide for the inspection of certain taxpayer records; to provide for interest and penalties; to provide exemptions, credits, and refunds; to provide for the disposition of funds; to provide for the interrelation of this act with other acts; and to make appropriations," (MCL 208.1101 to 208.1601) by adding section 457.

The People of the State of Michigan enact:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) If the Michigan film office determines that a taxpayer has complied with the terms of an agreement entered into under this section, the office shall issue an investment expenditure certificate to the taxpayer. The taxpayer shall submit a request to the office for an investment expenditure certificate on a form prescribed by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing an investment expenditure certificate and need not issue the investment expenditure certificate until satisfied that investment expenditures and eligibility are adequately established. The additional information requested may include a report of expenditures audited and certified by an independent certified

public accountant. Each investment expenditure certificate shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the taxpayer.

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

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

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

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

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

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

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

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

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

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

(11) As used in this section:

(a) "Base investment" means the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets expended by a person in the development of a qualified film and digital media infrastructure project. Base investment does not include a direct production expenditure or qualified personnel expenditure eligible for a credit under section 455.

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

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

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Richard J. Brown

Clerk of the House of Representatives

Approved

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Governor