

Act No. 78
Public Acts of 2008
Approved by the Governor
April 7, 2008
Filed with the Secretary of State
April 8, 2008
EFFECTIVE DATE: April 8, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Young, Meisner, Huizenga, Johnson, Miller, Leland, Hammon, Byrnes, Kathleen Law, Griffin, Condino, Robert Jones, Polidori, Gonzales, Corriveau, Espinoza, Brown, Simpson, Donigan, Gillard, Amos, Spade, McDowell, Bauer, Valentine, Hammel, Meadows, Dean, Casperson, Rick Jones, Bieda, Byrum, Ebli, Proos, Angerer, Accavitti, Palsrok, Nofs, Clemente, Hansen, Lemmons, Jackson, Lindberg, Clack, Hildenbrand, Vagnozzi, Sak, Knollenberg and Constan

ENROLLED HOUSE BILL No. 5842

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 4cc (MCL 205.54cc), as added by 2006 PA 657; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 4cc. (1) For tax years that begin after December 31, 2006 through February 29, 2008, the Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with a motion picture production company providing a credit against the tax imposed by this act as provided under subsection (2). To qualify for the credit under this section, a motion picture production company shall meet all of the following requirements:

(a) Shall spend at least \$200,000.00 in this state for purposes related to the filming or production of a single motion picture.

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

(c) Shall receive a postproduction certificate of completion under subsection (5).

(d) Shall submit a postproduction certificate of completion issued under subsection (5) to the department of treasury 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) An agreement under this section may provide for a motion picture production company to claim a tax credit under this section as follows:

(a) If the company incurs between \$200,000.00 and \$1,000,000.00 in production spending, up to 12% of its production spending.

(b) If the company incurs between \$1,000,000.01 and \$5,000,000.00 in production spending, up to 16% of its production spending.

(c) If the company incurs between \$5,000,000.01 and \$10,000,000.00 in production spending, up to 20% of its production spending. However, if a company incurs more than \$10,000,000.00 in production spending, the agreement may provide tax credits based only on the first \$10,000,000.00 of its production spending.

(3) A motion picture production company intending to engage in motion picture production in this state may submit an application to enter into an agreement under this section to the Michigan film office. The request shall be submitted in a form prescribed by the Michigan film office and shall be accompanied by all of the information and records requested by the Michigan film office. The Michigan film office shall not process the application until it is complete. As part of the application, the motion picture production company shall estimate its expected production spending for an identified motion picture. If the Michigan film 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 the motion picture production company shall commence work in this state on the identified motion picture within 90 days of the date of the agreement or else the agreement shall expire. However, upon request submitted by the motion picture production company based on good cause, the Michigan film office may extend the period for commencement of production for an additional 90 days.

(b) A statement identifying the motion picture production company and the motion picture that the company intends to produce in whole or in part in this state.

(c) The maximum amount of the credit under this section available to the motion picture production company for the motion picture it plans to produce in whole or in part in this state.

(d) A unique number assigned to the motion picture production project by the Michigan film office.

(e) A requirement that the motion picture not depict obscene matter or an obscene performance.

(4) The film office and the state treasurer shall not enter into an agreement with any motion picture production company providing credits for more than 4 motion pictures for any 1 tax year. In determining whether to enter into an agreement under this section, the film office and the state treasurer shall consider all of the following:

(a) The likelihood that in the absence of the credit the filming will take place in a location other than this state.

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

(c) The motion picture production company's record in completing commitments to engage in motion picture production.

(5) If the Michigan film office determines that a motion picture production company has complied with the terms of an agreement entered into under this section, the office shall issue a postproduction certificate to that motion picture production company. The motion picture production company shall submit a request to the Michigan film office on a form prescribed by the Michigan film office for a postproduction certificate, along with any documentation the Michigan film office requires. The office shall process each request within 60 days after it is complete. However, the office may request additional information and documentation before issuing a postproduction certificate of completion and need not issue the postproduction certificate until satisfied that production spending is adequately established. Each postproduction certificate of completion shall be signed by the Michigan film commissioner or his or her designee and shall include the following information:

(a) The name of the motion picture production company.

(b) The name of the motion picture produced in whole or in part in this state.

(c) The motion picture production company's production spending for the motion picture and the amount of the tax credit the company is entitled to claim under this section.

(d) The date of completion for the motion picture production in this state.

(e) The unique number assigned to the motion picture production project by the Michigan film office under subsection (3).

(f) The motion picture production company's federal employer identification number or Michigan treasury number.

(6) Information and records submitted by a motion picture production company to the Michigan film office under this section shall be considered confidential and exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, to the extent that they describe the commercial and financial operations of the company, they have not been publicly disseminated at any time, and their disclosure might put the company at a competitive disadvantage. A company submitting materials under this section shall specifically designate any information and records that the company deems confidential. The Michigan film office may release any information and records submitted under this section that have not been designated confidential by the company.

(7) A motion picture production company shall submit a postproduction certificate of completion issued under subsection (5) to the department of treasury. Subject to subsection (8), if the credit allowed under this section exceeds the tax liability of the motion picture production company for the tax year or if the motion picture production company does not have a tax liability under this act for the tax year, the department of treasury shall refund the excess or pay the amount of the credit to that motion picture production company.

(8) The total amount of tax credits available for all motion picture production companies and their assignees under this section shall not exceed \$7,000,000.00 for any 1 tax year.

(9) The state school aid fund established in section 11 of article IX of the state constitution of 1963 and all local units of government shall be held harmless for any credit or refund paid under this section. Any credit or refund paid under this section shall be paid from the general fund in the state treasury.

(10) Not later than March 1 of each year, the Michigan film office shall submit to the governor, the chairperson of the senate finance committee, and the house tax policy committee an annual report concerning the operation and effectiveness of the credit under this section. The requirements of section 28(1)(f) of 1941 PA 122, MCL 205.28, do not apply to disclosure of tax information required by this subsection. The report shall include all of the following:

(a) A brief assessment of the overall effectiveness of the credit under this section at attracting motion picture productions to this state during the immediately preceding year.

(b) The number of motion picture productions requesting tax credit approval during the immediately preceding year, the names of the motion pictures produced in this state for which credits were begun or completed in the immediately preceding year, and the locations in this state that were used in the production of approved motion pictures in the immediately preceding year.

(c) The amount of money spent by each motion picture production company identified in subdivision (b) to produce the motion pictures in this state and a breakdown of all production spending by all companies classified as goods, services, or salaries and wages.

(d) An estimate of the number of persons employed in this state by motion picture production companies that qualify for the credit under this section.

(e) The value of all tax credit certificates of completion issued under this section.

(f) An estimate of the cost to the general fund resulting from the tax credits claimed under this section and an estimate of increased direct and indirect spending in this state due to motion picture production.

(11) As used in this section:

(a) "Michigan film office" or "office" means the Michigan film office housed within the department of history, arts, and libraries before May 4, 2008, and housed within the Michigan strategic fund after May 3, 2008.

(b) "Motion picture" means a feature-length film produced for distribution in 2 or more states that is a production for which records are not required to be maintained with respect to any performer in the production under 18 USC 2257, or a television series or a commercial or series of commercials made in this state in whole or in part for theatrical or television viewing or as a television pilot. Motion picture does not include the production of any of the following:

(i) Televised news or current events programs.

(ii) Live sporting events.

(iii) Political advertising.

(iv) Radio programs.

(v) Weather shows.

(vi) Financial market reports.

(vii) Talk shows.

(viii) Game shows.

(ix) Product or service marketing.

(x) Awards shows or other events.

(c) "Motion picture production company" or "company" means an entity in the business of producing motion pictures. However, motion picture production company does not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made by this state, a loan guaranteed by this state, or a loan made or guaranteed by any other state.

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

(e) "Production spending" means the following expenditures made in this state to film or produce a single motion picture:

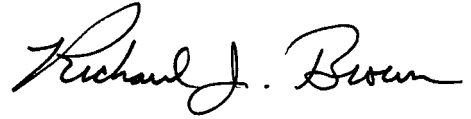
(i) Payments to vendors in this state to purchase tangible personal property that is used in making the motion picture.

(ii) Payments to vendors doing business in this state for services relating to motion picture production, editing, and processing.

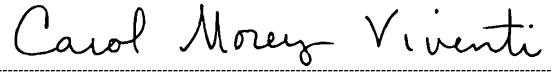
(iii) Payments and compensation, not to exceed \$100,000.00 for any 1 employee, for contractual or salaried employees who are residents of this state who perform services with respect to the production.

Enacting section 1. Section 4cc of general sales tax act, 1933 PA 167, MCL 205.54cc, is repealed effective December 31, 2009.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor