

Act No. 39
Public Acts of 2011
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Rep. Gilbert

ENROLLED HOUSE BILL No. 4362

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," by amending sections 107, 117, 409, and 455 (MCL 208.1107, 208.1117, 208.1409, and 208.1455), section 117 as amended by 2009 PA 142, section 409 as amended by 2010 PA 103, and section 455 as amended by 2010 PA 312, and by adding sections 500 and 510; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 107. (1) "Certificated credit" means any of the following:

(a) A tax voucher certificate that has been issued to a taxpayer under an agreement entered into before January 1, 2012 under section 419 or section 23 of the Michigan early stage venture investment act of 2003, 2003 PA 296, MCL 125.2253.

(b) A credit for which a preapproval letter has been issued to a qualified taxpayer under section 437 before January 1, 2012 to the extent the credit has not been fully claimed or paid prior to January 1, 2012.

(c) A credit for which a taxpayer or a qualified taxpayer has entered into an agreement with the Michigan economic growth authority under sections 430, 431, 431a, 431b, 431c, 432, 434, or 450 before January 1, 2012 to the extent the credit has not been fully claimed or paid prior to January 1, 2012.

(d) A credit for which a taxpayer or eligible production company has entered into an agreement with the Michigan film office with the concurrence of the state treasurer under section 455 or 457 before January 1, 2012 to the extent the credit has not been fully claimed or paid before January 1, 2012.

(e) A credit for which a qualified taxpayer has received a part 2 approval, approved rehabilitation plan, approved high community impact rehabilitation plan, or preapproval letter from the state historic preservation office under section 435 before January 1, 2012 to the extent the credit has not been fully claimed or paid before January 1, 2012.

(f) A credit under section 433 but only for a taxpayer that has a development agreement executed between a taxpayer and the Michigan strategic fund before January 1, 2012 or for a taxpayer that has entered into a qualified collaborative agreement under the Michigan renaissance zone act, 1996 PA 376, MCL 125.2681 to 125.2696, before January 1, 2012. As used in this subsection, "qualified collaborative agreement" means that term as defined in section 3 of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2683.

(g) A credit applicable to this act granted under section 36109 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.36109.

(h) A credit allowed a taxpayer under section 409 if the taxpayer has met the capital expenditure requirements under section 409(3).

(2) "Client" means an entity whose employment operations are managed by a professional employer organization.

(3) "Compensation" means all wages, salaries, fees, bonuses, commissions, other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors of the taxpayers, and any earnings that are net earnings from self-employment as defined under section 1402 of the internal revenue code of the taxpayer or a partner or limited liability company member of the taxpayer. Compensation includes, but is not limited to, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. Compensation also includes, on a cash or accrual basis consistent with the taxpayer's method of accounting for federal income tax purposes, payments to a pension, retirement, or profit sharing plan other than those payments attributable to unfunded accrued actuarial liabilities, and payments for insurance for which employees are the beneficiaries, including payments under health and welfare and noninsured benefit plans and payment of fees for the administration of health and welfare and noninsured benefit plans. Compensation for a taxpayer licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637, includes payments to an independent contractor licensed under article 25 or 26 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to 339.2637. Compensation does not include any of the following:

(a) Discounts on the price of the taxpayer's merchandise or services sold to the taxpayer's employees, officers, or directors that are not available to other customers.

(b) Except as otherwise provided in this subsection, payments to an independent contractor.

(c) Payments to state and federal unemployment compensation funds.

(d) The employer's portion of payments under the federal insurance contributions act, chapter 21 of subtitle C of the internal revenue code, 26 USC 3101 to 3128, the railroad retirement tax act, chapter 22 of subtitle C of the internal revenue code, 26 USC 3201 to 3233, and similar social insurance programs.

(e) Payments, including self-insurance payments, for worker's compensation insurance or federal employers' liability act insurance pursuant to 45 USC 51 to 60.

(4) "Corporation" means a taxpayer that is required or has elected to file as a corporation under the internal revenue code.

(5) "Department" means the department of treasury.

Sec. 117. (1) "Tangible personal property" means that term as defined in section 2 of the use tax act, 1937 PA 94, MCL 205.92.

(2) "Tax" means the tax imposed under this act, including interest and penalties under this act, unless the term is given a more limited meaning in the context of this act or a provision of this act.

(3) "Tax-exempt person" means an organization that is exempt from federal income tax under section 501(a) of the internal revenue code, and a partnership, limited liability company, joint venture, unincorporated association, or other group or combination of organizations acting as a unit if all such organizations are exempt from federal income tax under section 501(a) of the internal revenue code and if all activities of the unit are exclusively related to the charitable, educational, or other purposes or functions that are the basis for the exemption of such organizations from federal income tax, except the following:

(a) An organization exempt under section 501(c)(12) or (16) of the internal revenue code.

(b) An organization exempt under section 501(c)(4) of the internal revenue code that would be exempt under section 501(c)(12) of the internal revenue code but for its failure to meet the requirement in section 501(c)(12) that 85% or more of its income must consist of amounts collected from members.

(4) "Tax year" means the calendar year, or the fiscal year ending during the calendar year, upon the basis of which the tax base of a taxpayer is computed under this act. If a return is made for a fractional part of a year, tax year means the period for which the return is made. Except for the first return required by this act, a taxpayer's tax year is for the same period as is covered by its federal income tax return. A taxpayer that has a 52- or 53-week tax year beginning not more than 7 days before December 31 of any year is considered to have a tax year beginning after December of that tax year. If the term tax year in this act is used in reference to 1 or more previous or preceding tax years and those referenced tax years are before January 1, 2008, then those referenced tax years are deemed those same tax years during which former 1975 PA 228 was in effect.

(5) "Taxpayer" means, through December 31, 2011, a person or a unitary business group liable for a tax, interest, or penalty under this act. Beginning January 1, 2012, taxpayer means either of the following:

(a) A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit but is not subject to the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281,

MCL 206.601 to 206.713, and that elects under section 500 to file a return and pay the tax imposed under this act, if any.

(b) A person or unitary business group that has been approved to receive, has received, or has been assigned a certificated credit and that elected under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act, if any. If a person or unitary business group that elects under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, to file a return and pay the tax imposed under this act is part of a unitary business group as defined under this act, the unitary business group as defined under this act shall file the return and pay the tax, if any, under this act.

(6) "Unitary business group" means a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. For purposes of this subsection, flow of value is determined by reviewing the totality of facts and circumstances of business activities and operations.

(7) "United States person" means that term as defined in section 7701(a)(30) of the internal revenue code.

(8) "Unrelated business activity" means, for a tax-exempt person, business activity directly connected with an unrelated trade or business as defined in section 513 of the internal revenue code.

Sec. 409. (1) For tax years that begin on or after January 1, 2008 and end before January 1, 2013, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the amount of capital expenditures in this state on infield renovation, grandstand and infrastructure upgrades, and any other construction and upgrades, subject to the following:

(a) For the 2008 through 2010 tax years, the credit shall not exceed \$2,100,000.00 or the taxpayer's tax liability under this act, whichever is less.

(b) For the 2011 through the 2012 tax years, the credit shall not exceed \$1,580,000.00 or the taxpayer's tax liability under this act, whichever is less.

(2) Subject to the limitation provided under this subsection, for tax years that begin on or after December 1, 2012 and end before January 1, 2017, an eligible taxpayer may claim a credit against the tax imposed by this act equal to the amount of capital expenditures in this state on infield renovation, grandstand and infrastructure upgrades, and any other construction and upgrades. The credit allowed under this subsection shall not exceed \$1,580,000.00 or the taxpayer's tax liability under this act.

(3) To be eligible to claim the credit allowed under subsection (1), an eligible taxpayer shall expend at least \$30,000,000.00 on capital expenditures before January 1, 2011. To be eligible to claim the credit allowed under subsection (2), an eligible taxpayer shall, in addition to the expenditures required to claim the credit under subsection (1), expend, at a minimum, an additional \$32,000,000.00 on capital expenditures as follows:

(a) At least \$10,000,000.00 after December 31, 2010 and before January 1, 2013.

(b) Including the amount expended under subdivision (a), a cumulative total of at least \$32,000,000.00 after December 31, 2010 and before January 1, 2016.

(4) As used in this section:

(a) "Eligible taxpayer" means any of the following:

(i) A person who owns and operates a motorsports entertainment complex and has at least 2 days of motorsports events each calendar year which shall be comparable to NASCAR Nextel cup events held in 2007 or their successor events.

(ii) A person who is the lessee and operator of a motorsports entertainment complex or the lessee of the land on which a motorsports entertainment complex is located and operates that motorsports entertainment complex.

(iii) A person who operates and maintains a motorsports entertainment complex under an operation and management agreement.

(b) "Motorsports entertainment complex" means a closed-course motorsports facility, and its ancillary grounds and facilities, that satisfies all of the following:

(i) Has at least 70,000 fixed seats for race patrons.

(ii) Has at least 6 scheduled days of motorsports events each calendar year.

(iii) Serves food and beverages at the motorsports entertainment complex during motorsports events each calendar year through concession outlets, which are staffed by individuals who represent or are members of 1 or more nonprofit civic or charitable organizations that directly benefit from the concession outlets' sales.

(iv) Engages in tourism promotion.

(v) Has permanent exhibitions of motorsports history, events, or vehicles within the motorsports entertainment complex.

(c) "Motorsports event" means a motorsports race and its ancillary activities that have been sanctioned by a sanctioning body.

(d) "Sanctioning body" means the American motorcycle association (AMA); auto racing club of America (ARCA); championship auto racing teams (CART); grand American road racing association (GRAND AM); Indy racing league (IRL); national association for stock car auto racing (NASCAR); national hot rod association (NHRA); professional sports car racing (PSR); sports car club of America (SCCA); United States auto club (USAC); Michigan state promoters association; or any successor organization or any other nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events and grants rights to conduct the events, that has established and administers rules and regulations governing all participants involved in the events and all persons conducting the events, and that requires certain liability assurances, including insurance.

Sec. 455. (1) The Michigan film office, with the concurrence of the state treasurer, may enter into an agreement with an eligible production company providing the company with a credit against the tax imposed by this act as provided under this section. To qualify for the credit under this section, a company shall meet all of the following requirements:

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

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

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

(d) Submit the postproduction certificate of completion issued by the office under subsection (5) to the department under subsection (8).

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

(a) A direct expenditure, or qualified personnel expenditure, for which the company claims a credit under section 459.

(b) A direct expenditure, or qualified personnel expenditure, for which another taxpayer claims a credit under this section or a credit under section 459.

(3) An eligible production company intending to produce a qualified production in this state, or that initiated production of a qualified production after February 29, 2008 and before April 8, 2008, may submit an application to enter into an agreement under this section to the Michigan film office. Except for a qualified production for which production was initiated after February 29, 2008 and before April 8, 2008, direct production expenditures and qualified personnel expenditures incurred prior to approval of an agreement under this section are not eligible for the credit under this section. The request 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. As part of the application, the company shall estimate direct production expenditures and qualified personnel expenditures for an identified qualified production. 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 the eligible production company commence work in this state on the identified qualified production within 90 days of the date of the agreement or else the agreement shall expire. However, upon request submitted by the company based on good cause, the office may extend the period for commencement of work in this state for up to an additional 90 days.

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

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

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

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

(f) A requirement that the company provide the office with the information and independent certification the office and the department deem necessary to verify direct production expenditures, qualified personnel expenditures, and eligibility for the credit under this section.

(g) If determined to be necessary by the office and the state treasurer, a provision for addressing expenditures in excess of those identified in the agreement.

(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 production will be produced in a location other than this state.

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

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

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

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

(5) If the Michigan film office determines that an eligible production company has complied with the terms of an agreement entered into under this section, the office shall issue a postproduction certificate of completion to the company. The company shall submit a request to the office for a postproduction certificate of completion 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 a postproduction certificate of completion and need not issue the postproduction certificate of completion until satisfied that direct production expenditures, qualified personnel expenditures, and eligibility are adequately established. The additional information requested may include a report of direct production expenditures and qualified personnel expenditures for the qualified production audited and certified by an independent certified public accountant. Each postproduction certificate of completion shall be signed by the Michigan film commissioner and shall include the following information:

(a) The name of the eligible production company.

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

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

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

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

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

(g) 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. For purposes of this subsection, information or records that describe commercial and financial operations do not include that portion of information or records that include any expenses that qualify under this section as qualified personnel expenditures or direct production expenditures and for which a credit may be claimed.

(7) The Michigan film office shall, on January 15 and July 15 in each year, make available on its website a detailed semiannual report that includes, at a minimum, all of the following:

(a) The number of applications received for a credit under this section in the immediately preceding 6 months, including the name of the eligible production company that submitted the application and a brief description of the proposed qualified production, including the locations in this state to be used in the production and the proposed amount of money to be expended by the eligible production company to produce the qualified production in this state.

(b) The number of applications approved during the immediately preceding 6 months.

(c) The number of postproduction certificates of completion issued during the immediately preceding 6 months and the total amount of credits certified under those postproduction certificates of completion.

(8) An eligible production company shall submit a postproduction certificate of completion issued under subsection (5) to the department. The Michigan film office shall forward a copy of each postproduction certificate of completion issued pursuant to this subsection to the governor, the president of the Michigan strategic fund, the chairperson of the senate

finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency. If the credit allowed under this section exceeds the tax liability of the company for the tax year or if the company claiming the credit does not have a tax liability under this act for the tax year, the department shall refund the excess or pay the amount of the credit to the company. The department shall, as soon as the information is available, annually report to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency the total amount of the credits certified under this section that exceed the taxpayer's tax liability for the most recent year that tax information is available and for which returns have cleared and been processed. The credit under this section shall be claimed after all other credits under this act.

(9) An eligible production company 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 company 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. The qualified taxpayer 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.

(10) 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 fund and be deposited by the department in the Michigan film promotion fund.

(11) 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 promotion fund.

(12) Not later than March 1 of each year after 2008, the Michigan film office shall submit to the governor, the president of the Michigan strategic fund, the chairperson of the senate finance committee, the chairperson of the house tax policy committee, the director of the senate fiscal agency, and the director of the house fiscal agency 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 qualified productions to this state during the immediately preceding calendar year.

(b) The number of qualified productions for which the eligible production company applied for a tax credit under this section during the immediately preceding year; the names of the qualified productions 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 qualified productions in the immediately preceding calendar year.

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

(d) The number of below the line crew employed in this state by eligible production companies that qualified for the credit under this section in the immediately preceding calendar year; how many of those persons employed were residents of this state and not included in qualified personnel expenditures, and the total number of hours worked on the qualified production for which a credit is granted.

(e) For requests for postproduction certificates of completion submitted after January 2, 2011, the number of above the line personnel employed in this state by the eligible production companies that qualified for the credit under this section in the immediately preceding calendar year and how many of those personnel employed were residents of this state. For purposes of this subdivision, above the line personnel means personnel who are not below the line crew.

(f) For requests for postproduction certificates of completion submitted after January 2, 2011, the number of persons employed in this state by the eligible production companies that qualified for the credit under this section in the immediately preceding calendar year that earned more than \$250,000.00 on a qualified production and how many of those persons were residents of this state.

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

(h) The amount known by the Michigan film office of other state and local assistance provided to eligible production companies in addition to the tax credit under this section.

(13) As used in this section:

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

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

(c) “Direct production expenditure” means a development, preproduction, production, or postproduction expenditure made in this state that is not a qualified personnel expenditure directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this state, including, but not limited to, all of the following:

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

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

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

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

(D) Catering, food, lodging, and related services and materials.

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

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

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

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

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

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

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

(ii) Payments and compensation, not to exceed \$2,000,000.00 for any 1 employee or contractual or salaried employee who performs services in this state for the production or distribution of a qualified production, including all of the following:

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

(B) Payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member if the personal services corporation or professional employer organization is subject to the tax levied under this act on the portion of the payment qualifying for the tax credit under this section and the payments received by the performing artist or crew member that are subject to taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.697, and are withheld and paid to this state in the amount provided under section 351 of the income tax act of 1967, 1967 PA 281, MCL 206.351.

(d) “Eligible production company” or “company” means an entity in the business of producing qualified productions, but 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.

(e) “Interactive website” means a website, the production costs of which exceed \$500,000.00 in an annual period and primarily includes interactive games, end user applications, animation, simulation, sound, graphics, story lines, or video created or repurposed for distribution over the internet. Interactive website does not include a website primarily used for institutional, private, industrial, retail, or wholesale marketing or promotional purposes, or which contains obscene matter or an obscene performance.

(f) “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.

(g) "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.

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

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

(j) "Qualified personnel expenditure" means an expenditure made in this state directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this state and is a payment or compensation payable to below the line crew for below the line crew members who were not residents of this state for at least 60 days before approval of the agreement for the qualified production under subsection (3), not to exceed \$2,000,000.00 for any 1 employee or contractual or salaried employee who performs service in this state for the production of a qualified production, including both of the following:

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

(ii) Payment to a personal services corporation or professional employer organization for the services of a performing artist or crew member if the personal services corporation or professional employer organization is subject to the tax levied under this act on the portion of the payment qualifying for the tax credit under this section and the payments received by the performing artist or crew member that are subject to taxation under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.697, and are withheld and paid to this state in the amount provided under section 351 of the income tax act of 1967, 1967 PA 281, MCL 206.351.

(k) "State certified qualified production" or "qualified production" means single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the general public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website. Qualified production also includes any trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a production. Qualified production does not include any of the following:

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

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

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

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

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

(vi) A radio program.

(vii) A weather show.

(viii) A financial market report.

(ix) A talk show.

(x) A game show.

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

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

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

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

(l) "Sound recording" means a recording of music, poetry, or spoken-word performance, but does not include the audio portions spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, or athletic event.

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

Sec. 500. (1) Except as otherwise provided in subsection (2), a taxpayer described under section 117(5)(a) or under section 680 of the income tax act of 1967, 1967 PA 281, MCL 206.680, that voluntarily elects for the taxpayer's first tax year ending after December 31, 2011 to file a return and pay the tax imposed by this act in order to claim a certificated credit or any unused carryforward for that tax year shall continue to file a return and pay the tax imposed under this

act for each tax year thereafter until that certificated credit and any carryforward from that credit is used up. If a person awarded a certificated credit is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under this act and claim the certificated credit.

(2) A taxpayer with a certificated credit under section 435 or 437, which certificated credit or any unused carryforward may be claimed in a tax year ending after December 31, 2011 may elect to pay the tax imposed by this act in the tax year in which that certificated credit may be claimed in lieu of the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713. If a person with a certificated credit under section 435 or 437 that elects under this subsection to pay the tax imposed by this act is a member of a unitary business group, the unitary business group, and not the member, shall file a return and pay the tax, if any, under this act and claim that certificated credit.

(3) A taxpayer with a certificated credit under section 435 or 437 that elects under subsection (2) after the taxpayer's first tax year ending after December 31, 2011 to pay the tax imposed by this act may claim any other certificated credit that taxpayer would be eligible for in the year in which the taxpayer claims a certificated credit under section 435 or 437, but not any certificated credit that would have accrued in any year before the election under subsection (2). When the taxpayer's certificated credit under section 435 or 437 that was the basis for the taxpayer's election under subsection (2) is extinguished, the taxpayer is no longer eligible to pay the tax under this act and may no longer claim any other remaining certificated credits.

(4) For tax years that begin after December 31, 2011, a taxpayer's tax liability under this act, after application of all credits, deductions, and exemptions, shall be the greater of the following:

(a) The amount of the taxpayer's tax liability under this act, notwithstanding the calculation required under this section, after application of all credits, deductions, and exemptions and any carryforward of any unused credit as prescribed in this act.

(b) An amount equal to the taxpayer's tax liability as computed pursuant to part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, after application of all credits, deductions, and exemptions under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, as if the taxpayer were subject to the tax imposed under part 2 of the income tax act of 1967, 1967 PA 281, MCL 206.601 to 206.713, less the amount of the taxpayer's certificated credits, including any unused carryforward of a certificated credit, that the taxpayer was allowed to claim for the tax year under this act. However, in calculating the amount under this subdivision, the following apply:

(i) A taxpayer described under section 117(5)(a) shall not include any business loss for any prior year in which the taxpayer was not subject to the tax levied under this act.

(ii) A taxpayer shall not include any nonrefundable certificated credit to the extent that credit exceeds the taxpayer's tax liability. Any nonrefundable credit remaining after application of the limitation in this subparagraph may be carried forward.

(5) If the result of the calculation under subsection (4) is negative, the taxpayer shall be refunded that amount.

(6) A taxpayer with a certificated credit under section 435 or 437 that elects to pay the tax under this act may elect to claim a refundable credit as provided under section 510. If a refundable credit is claimed under section 510, that credit shall not be used to calculate a taxpayer's tax liability under subsection (4).

Sec. 510. (1) If a certificate of completion, assignment certificate, or component completion certificate is issued under section 437 to a taxpayer or if a certificate of completed rehabilitation, assignment certificate, or reassignment certificate is issued under section 435 to a taxpayer, the taxpayer may elect to claim a refundable credit for 90% of the amount of that certificate or any carryforward remaining from that certificate, whichever is less. The claim may be filed before the end of the tax year, and the department shall pay the refundable credit within 60 days after receiving the claim. A taxpayer claiming a credit under this section shall forgo the remaining 10% of the credit.

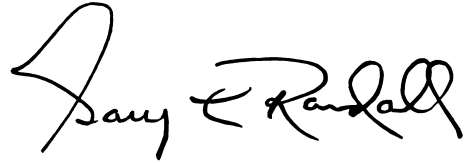
(2) If section 437 or 435 provides that payment of a credit will be made over a period of years or limits the annual amount of a payment, a refundable credit may only be claimed under subsection (1) for the amount payable in the year claimed. A taxpayer may elect to claim a refundable credit under subsection (1) in each year that a credit is payable under section 437 or 435. Notwithstanding the foregoing, a taxpayer may elect under subsection (1) to claim the balance of a refundable credit awarded under section 435(20), but the amount of that refund shall be equal to 86% of the amount of the credit and the taxpayer shall forgo the remaining 14% of the credit.

(3) Notwithstanding the provisions of section 437(18) and section 435(9), for tax years ending after December 31, 2011, a taxpayer may not claim a refundable credit under section 437(18) or section 435(9) and may only claim a refundable credit under sections 437 and 435 as provided in subsection (1).

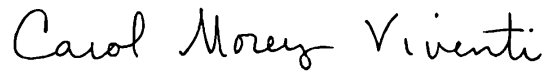
Enacting section 1. The Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, is repealed effective on the date that the secretary of state receives a written notice from the department of treasury that the last certificated credit or any carryforward from that certificated credit has been claimed.

Enacting section 2. This amendatory act does not take effect unless House Bill No. 4361 of the 96th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: House Bill No. 4361, referred to in enacting section 2, was filed with the Secretary of State May 25, 2011, and became 2011 PA 38, Eff. Oct. 1, 2011.