

SUBSTITUTE FOR  
HOUSE BILL NO. 4362

A bill to amend 2007 PA 36, entitled "Michigan business tax act," by amending sections 107, 117, and 455 (MCL 208.1107, 208.1117, and 208.1455), section 117 as amended by 2009 PA 142 and section 455 as amended by 2010 PA 312, and by adding section 500; and to repeal acts and parts of acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 107. (1) "CERTIFICATED CREDIT" MEANS ANY OF THE  
2 FOLLOWING:

3           (A) A TAX VOUCHER CERTIFICATE THAT HAS BEEN ISSUED TO A  
4 TAXPAYER UNDER AN AGREEMENT ENTERED INTO BEFORE JANUARY 1, 2012  
5 UNDER SECTION 419 OR SECTION 23 OF THE MICHIGAN EARLY STAGE VENTURE  
6 INVESTMENT ACT OF 2003, 2003 PA 296, MCL 125.2253.

7           (B) A CREDIT FOR WHICH A PREAPPROVAL LETTER HAS BEEN ISSUED TO  
8 A QUALIFIED TAXPAYER UNDER SECTION 437 BEFORE JANUARY 1, 2012 TO

1 THE EXTENT THE CREDIT HAS NOT BEEN FULLY CLAIMED OR PAID PRIOR TO  
2 JANUARY 1, 2012.

3 (C) A CREDIT FOR WHICH A TAXPAYER OR A QUALIFIED TAXPAYER HAS  
4 ENTERED INTO AN AGREEMENT WITH THE MICHIGAN ECONOMIC GROWTH  
5 AUTHORITY UNDER SECTIONS 430, 431, 431A, 431B, 431C, 432, 434, OR  
6 450 BEFORE JANUARY 1, 2012 TO THE EXTENT THE CREDIT HAS NOT BEEN  
7 FULLY CLAIMED OR PAID PRIOR TO JANUARY 1, 2012.

8 (D) A CREDIT FOR WHICH A TAXPAYER OR ELIGIBLE PRODUCTION  
9 COMPANY HAS ENTERED INTO AN AGREEMENT WITH THE MICHIGAN FILM OFFICE  
10 WITH THE CONCURRENCE OF THE STATE TREASURER UNDER SECTION 455 OR  
11 457 BEFORE JANUARY 1, 2012 TO THE EXTENT THE CREDIT HAS NOT BEEN  
12 FULLY CLAIMED OR PAID BEFORE JANUARY 1, 2012.

13 (E) A CREDIT FOR WHICH A QUALIFIED TAXPAYER HAS RECEIVED A  
14 PART 2 APPROVAL, APPROVED REHABILITATION PLAN, APPROVED HIGH  
15 COMMUNITY IMPACT REHABILITATION PLAN, OR PREAPPROVAL LETTER FROM  
16 THE STATE HISTORIC PRESERVATION OFFICE UNDER SECTION 435 BEFORE  
17 JANUARY 1, 2012 TO THE EXTENT THE CREDIT HAS NOT BEEN FULLY CLAIMED  
18 OR PAID BEFORE JANUARY 1, 2012.

19 (F) A CREDIT UNDER SECTION 433 BUT ONLY FOR A TAXPAYER THAT  
20 HAS A DEVELOPMENT AGREEMENT EXECUTED BETWEEN A TAXPAYER AND THE  
21 MICHIGAN STRATEGIC FUND BEFORE JANUARY 1, 2012.

22 (G) A CREDIT UNDER THIS ACT UNDER SECTION 36109 OF THE NATURAL  
23 RESOURCES AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL  
24 324.36109.

25 (H) A CREDIT ALLOWED A TAXPAYER UNDER SECTION 409 IF THE  
26 TAXPAYER HAS MET THE CAPITAL EXPENDITURE REQUIREMENTS UNDER SECTION  
27 409(4).

1           (2) ~~(1)~~—"Client" means an entity whose employment operations  
2 are managed by a professional employer organization.

3           (3) ~~(2)~~—"Compensation" means all wages, salaries, fees,  
4 bonuses, commissions, other payments made in the tax year on behalf  
5 of or for the benefit of employees, officers, or directors of the  
6 taxpayers, and any earnings that are net earnings from self-  
7 employment as defined under section 1402 of the internal revenue  
8 code of the taxpayer or a partner or limited liability company  
9 member of the taxpayer. Compensation includes, but is not limited  
10 to, payments that are subject to or specifically exempt or excepted  
11 from withholding under sections 3401 to 3406 of the internal  
12 revenue code. Compensation also includes, on a cash or accrual  
13 basis consistent with the taxpayer's method of accounting for  
14 federal income tax purposes, payments to a pension, retirement, or  
15 profit sharing plan other than those payments attributable to  
16 unfunded accrued actuarial liabilities, and payments for insurance  
17 for which employees are the beneficiaries, including payments under  
18 health and welfare and noninsured benefit plans and payment of fees  
19 for the administration of health and welfare and noninsured benefit  
20 plans. Compensation for a taxpayer licensed under article 25 or 26  
21 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and  
22 339.2601 to 339.2637, includes payments to an independent  
23 contractor licensed under article 25 or 26 of the occupational  
24 code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to  
25 339.2637. Compensation does not include any of the following:

26           (a) Discounts on the price of the taxpayer's merchandise or  
27 services sold to the taxpayer's employees, officers, or directors

1 that are not available to other customers.

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

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

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

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

14 (4) ~~(3)~~—"Corporation" means a taxpayer that is required or has  
15 elected to file as a corporation under the internal revenue code.

16 (5) ~~(4)~~—"Department" means the department of treasury.

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

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

23 (3) "Tax-exempt person" means an organization that is exempt  
24 from federal income tax under section 501(a) of the internal  
25 revenue code, and a partnership, limited liability company, joint  
26 venture, unincorporated association, or other group or combination  
27 of organizations acting as a unit if all such organizations are

1 exempt from federal income tax under section 501(a) of the internal  
2 revenue code and if all activities of the unit are exclusively  
3 related to the charitable, educational, or other purposes or  
4 functions that are the basis for the exemption of such  
5 organizations from federal income tax, except the following:

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

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

13 (4) "Tax year" means the calendar year, or the fiscal year  
14 ending during the calendar year, upon the basis of which the tax  
15 base of a taxpayer is computed under this act. If a return is made  
16 for a fractional part of a year, tax year means the period for  
17 which the return is made. Except for the first return required by  
18 this act, a taxpayer's tax year is for the same period as is  
19 covered by its federal income tax return. A taxpayer that has a 52-  
20 or 53-week tax year beginning not more than 7 days before December  
21 31 of any year is considered to have a tax year beginning after  
22 December of that tax year. If the term tax year in this act is used  
23 in reference to 1 or more previous or preceding tax years and those  
24 referenced tax years are before January 1, 2008, then those  
25 referenced tax years are deemed those same tax years during which  
26 former 1975 PA 228 was in effect.

27 (5) "Taxpayer" means, **THROUGH DECEMBER 31, 2011**, a person or a

House Bill No. 4362 (H-1) as amended April 27, 2011

1 unitary business group liable for a tax, interest, or penalty under  
2 this act. BEGINNING JANUARY 1, 2012, TAXPAYER MEANS EITHER OF THE  
3 FOLLOWING:

4 (A) A PERSON OR UNITARY BUSINESS GROUP THAT HAS BEEN APPROVED  
5 TO RECEIVE, HAS RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED  
6 CREDIT BUT IS NOT SUBJECT TO THE TAX IMPOSED UNDER PART 2 OF THE  
7 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.697, AND  
8 THAT ELECTS DURING THE FIRST TAX YEAR AFTER THE EFFECTIVE DATE OF  
9 THE AMENDATORY ACT THAT ADDED SECTION 500 TO FILE A RETURN AND PAY  
10 THE TAX IMPOSED UNDER THIS ACT[, IF ANY].

11 (B) A PERSON OR UNITARY BUSINESS GROUP THAT HAS BEEN APPROVED  
12 TO RECEIVE, HAS RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED  
13 CREDIT AND THAT ELECTED UNDER SECTION 680 OF THE INCOME TAX ACT OF  
14 1967, 1967 PA 281, MCL 206.680, TO FILE A RETURN AND PAY THE TAX  
15 IMPOSED UNDER THIS ACT[, IF ANY].

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

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

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

7 Sec. 455. (1) The Michigan film office, with the concurrence  
8 of the state treasurer, may enter into an agreement with an  
9 eligible production company providing the company with a credit  
10 against the tax imposed by this act ~~or against taxes withheld under~~  
11 ~~chapter 7 of the income tax act of 1967, 1967 PA 281, MCL 206.351~~  
12 ~~to 206.367, as provided under this section. and section 367 of the~~  
13 ~~income tax act of 1967, 1967 PA 281, MCL 206.367.~~ To qualify for  
14 the credit under this section, a company shall meet all of the  
15 following requirements:

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

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

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

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

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

1           (2) For direct production expenditures or qualified personnel  
2 expenditures made after February 29, 2008, an agreement under this  
3 section may provide for an eligible production company to claim a  
4 tax credit equal to 42% of direct production expenditures for a  
5 state certified qualified production in a core community, 40% of  
6 direct production expenditures for a state certified qualified  
7 production in part of this state other than a core community, and  
8 30% for qualified personnel expenditures. A taxpayer shall not  
9 claim a credit under this section for any of the following:

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

12 ~~(b) A direct expenditure, or qualified personnel expenditure,~~  
13 ~~for which the company claims a credit under section 367 of the~~  
14 ~~income tax act of 1967, 1967 PA 281, MCL 206.367.~~

15           **(B)** ~~(e)~~ A direct expenditure, or qualified personnel  
16 expenditure, for which another taxpayer claims a credit under this  
17 section ~~, OR~~ a credit under section 459. ~~, or a credit under~~  
18 ~~section 367 of the income tax act of 1967, 1967 PA 281, MCL~~  
19 ~~206.367.~~

20           (3) An eligible production company intending to produce a  
21 qualified production in this state, or that initiated production of  
22 a qualified production after February 29, 2008 and before April 8,  
23 2008, may submit an application to enter into an agreement under  
24 this section to the Michigan film office. Except for a qualified  
25 production for which production was initiated after February 29,  
26 2008 and before April 8, 2008, direct production expenditures and  
27 qualified personnel expenditures incurred prior to approval of an



1 agreement under this section are not eligible for the credit under  
2 this section. The request shall be submitted in a form prescribed  
3 by the Michigan film office and shall be accompanied by a \$100.00  
4 application fee and all of the information and records requested by  
5 the office. An application fee received by the office under this  
6 subsection shall be deposited in the Michigan film promotion fund.  
7 The office shall not process the application until it is complete.  
8 As part of the application, the company shall estimate direct  
9 production expenditures and qualified personnel expenditures for an  
10 identified qualified production. If the office, with the  
11 concurrence of the state treasurer, determines to enter into an  
12 agreement under this section, the agreement shall provide for all  
13 of the following:

14 (a) A requirement that the eligible production company  
15 commence work in this state on the identified qualified production  
16 within 90 days of the date of the agreement or else the agreement  
17 shall expire. However, upon request submitted by the company based  
18 on good cause, the office may extend the period for commencement of  
19 work in this state for up to an additional 90 days.

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

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

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

27 (e) If the qualified production is a long-form narrative film

1 production, a requirement that the qualified production include an  
2 acknowledgement that the qualified production was filmed in this  
3 state.

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

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

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

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

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

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

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

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

21 (a) The name of the eligible production company.

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

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

27 (d) The date of completion for the qualified production in

1 this state.

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

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

6 (g) Any independent certification required by the department  
7 or the Michigan film office.

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

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

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

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

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

15           (8) An eligible production company shall submit a  
16 postproduction certificate of completion issued under subsection  
17 (5) to the department. The Michigan film office shall forward a  
18 copy of each postproduction certificate of completion issued  
19 pursuant to this subsection to the governor, the president of the  
20 Michigan strategic fund, the chairperson of the senate finance  
21 committee, the chairperson of the house tax policy committee, the  
22 director of the senate fiscal agency, and the director of the house  
23 fiscal agency. If the credit allowed under this section exceeds the  
24 tax liability of the company for the tax year or if the company  
25 claiming the credit does not have a tax liability under this act  
26 for the tax year, the department shall refund the excess or pay the  
27 amount of the credit to the company. The department shall, as soon

1 as the information is available, annually report to the governor,  
2 the president of the Michigan strategic fund, the chairperson of  
3 the senate finance committee, the chairperson of the house tax  
4 policy committee, the director of the senate fiscal agency, and the  
5 director of the house fiscal agency the total amount of the credits  
6 certified under this section that exceed the taxpayer's tax  
7 liability for the most recent year that tax information is  
8 available and for which returns have cleared and been processed.  
9 The credit under this section shall be claimed after all other  
10 credits under this act.

11 (9) An eligible production company may assign all or a portion  
12 of a credit under this section to any assignee. An assignee may  
13 subsequently assign a credit or any portion of a credit assigned  
14 under this subsection to 1 or more assignees. A company may claim a  
15 portion of a credit and assign the remaining credit amount. A  
16 credit assignment under this subsection is irrevocable. The credit  
17 assignment under this subsection shall be made on a form prescribed  
18 by the department. The qualified taxpayer shall send a copy of the  
19 completed assignment form to the department in the tax year in  
20 which the assignment is made and shall attach a copy of the form to  
21 the return on which the credit is claimed.

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

27 (11) A taxpayer that willfully submits information under this

1 section that the taxpayer knows to be fraudulent or false shall, in  
2 addition to any other penalties provided by law, be liable for a  
3 civil penalty equal to the amount of the taxpayer's credit under  
4 this section. A penalty collected under this section shall be  
5 deposited in the Michigan film promotion fund.

6 (12) Not later than March 1 of each year after 2008, the  
7 Michigan film office shall submit to the governor, the president of  
8 the Michigan strategic fund, the chairperson of the senate finance  
9 committee, the chairperson of the house tax policy committee, the  
10 director of the senate fiscal agency, and the director of the house  
11 fiscal agency an annual report concerning the operation and  
12 effectiveness of the credit under this section. The requirements of  
13 section 28(1)(f) of 1941 PA 122, MCL 205.28, do not apply to  
14 disclosure of tax information required by this subsection. The  
15 report shall include all of the following:

16 (a) A brief assessment of the overall effectiveness of the  
17 credit under this section at attracting qualified productions to  
18 this state during the immediately preceding calendar year.

19 (b) The number of qualified productions for which the eligible  
20 production company applied for a tax credit under this section  
21 during the immediately preceding year, the names of the qualified  
22 productions produced in this state for which credits were begun or  
23 completed in the immediately preceding year, and the locations in  
24 this state that were used in the production of qualified  
25 productions in the immediately preceding calendar year.

26 (c) The amount of money spent by each eligible production  
27 company identified in subdivision (b) to produce each qualified

1 production in this state and a breakdown of all production spending  
2 by all companies classified as goods, services, or salaries and  
3 wages in the immediately preceding calendar year.

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

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

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

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



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

4 (13) As used in this section:

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

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

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

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

21 (A) Expenditures for optioning or purchasing intellectual  
22 property including, but not limited to, books, scripts, music, or  
23 trademarks relating to the development or purchase of a script,  
24 story, scenario, screenplay, or format, including all expenditures  
25 generally associated with the optioning or purchase of intellectual  
26 property, including option money, agent fees, and attorney fees  
27 relating to the transaction, but not including deferrals,

1    deferments, royalties, profit participation, or recourse or  
2    nonrecourse loans negotiated by the eligible production company to  
3    obtain the rights to the intellectual property.

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

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

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

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

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

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

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

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

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

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

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

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

19 (B) Payment to a personal services corporation or professional  
20 employer organization for the services of a performing artist or  
21 crew member if the personal services corporation or professional  
22 employer organization is subject to the tax levied under this act  
23 on the portion of the payment qualifying for the tax credit under  
24 this section and the payments received by the performing artist or  
25 crew member that are subject to taxation under the income tax act  
26 of 1967, 1967 PA 281, MCL 206.1 to ~~206.532~~ **206.697**, and are  
27 withheld and paid to this state in the amount provided under

1 section 351 of the income tax act of 1967, 1967 PA 281, MCL  
2 206.351.

3 (d) "Eligible production company" or "company" means an entity  
4 in the business of producing qualified productions, but does not  
5 include an entity that is more than 30% owned, affiliated, or  
6 controlled by an entity or individual who is in default on a loan  
7 made by this state, a loan guaranteed by this state, or a loan made  
8 or guaranteed by any other state.

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

18 (f) "Michigan film office" or "office" means the Michigan film  
19 office created under chapter 2A of the Michigan strategic fund act,  
20 1984 PA 270, MCL 125.2029 to 125.2029g.

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

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

26 (i) "Postproduction expenditure" means a direct expenditure  
27 for editing, Foley recording, automatic dialogue replacement, sound

1 editing, special or visual effects including computer-generated  
2 imagery or other effects, scoring and music editing, beginning and  
3 end credits, negative cutting, soundtrack production, dubbing,  
4 subtitling, or addition of sound or visual effects. Postproduction  
5 expenditure includes direct expenditures for advertising,  
6 marketing, distribution, or related expenses.

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

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

19 (ii) Payment to a personal services corporation or professional  
20 employer organization for the services of a performing artist or  
21 crew member if the personal services corporation or professional  
22 employer organization is subject to the tax levied under this act  
23 on the portion of the payment qualifying for the tax credit under  
24 this section and the payments received by the performing artist or  
25 crew member that are subject to taxation under the income tax act  
26 of 1967, 1967 PA 281, MCL 206.1 to ~~206.532~~ **206.697**, and are  
27 withheld and paid to this state in the amount provided under

1 section 351 of the income tax act of 1967, 1967 PA 281, MCL  
2 206.351.

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

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

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

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

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

## House Bill No. 4362 (H-1) as amended April 27, 2011

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

3 (vi) A radio program.

4 (vii) A weather show.

5 (viii) A financial market report.

6 (ix) A talk show.

7 (x) A game show.

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

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

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

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

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

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

21 **SEC. 500. (1) A TAXPAYER DESCRIBED UNDER SECTION 117(5) (A)**  
22 **THAT VOLUNTARILY ELECTS DURING THE TAXPAYER'S FIRST TAX YEAR AFTER**  
23 **THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION TO**  
24 **FILE A RETURN AND PAY THE TAX IMPOSED BY THIS ACT[, IF ANY] IN ORDER TO**  
25 **CLAIM**  
26 **A CERTIFICATED CREDIT SHALL CONTINUE TO FILE A RETURN AND PAY THE**  
27 **TAX IMPOSED UNDER THIS ACT[, IF ANY] FOR EACH TAX YEAR THEREAFTER UNTIL**  
**THAT**  
**CERTIFICATED CREDIT AND ANY CARRYFORWARD FROM THAT CREDIT IS ALL**

House Bill No. 4362 (H-1) as amended April 27, 2011  
1 USED UP.

2 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), FOR TAX  
3 YEARS THAT BEGIN AFTER DECEMBER 31, 2011, A TAXPAYER'S TAX  
4 LIABILITY UNDER THIS ACT SHALL BE DETERMINED BY SUBTRACTING THE  
5 TOTAL AMOUNT OF CERTIFICATED CREDITS THAT THE TAXPAYER IS ALLOWED  
6 TO CLAIM DURING THE TAX YEAR UNDER THIS ACT FROM THE GREATER OF THE  
7 FOLLOWING:

8 (A) THE AMOUNT OF THE TAXPAYER'S LIABILITY UNDER THIS ACT  
9 BEFORE THE [SUBTRACTION] OF THE CERTIFICATED CREDITS.

10 (B) THE AMOUNT OF THE TAXPAYER'S LIABILITY UNDER PART 2 OF THE  
11 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.697, AS IF  
12 THE TAXPAYER WAS SUBJECT TO THE TAX IMPOSED UNDER PART 2 OF THE  
13 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.697, LESS ANY  
14 [BUSINESS ] LOSS THAT WOULD HAVE CARRIED OVER FROM THE  
15 IMMEDIATELY PRECEDING TAX YEAR IF THE TAXPAYER HAD BEEN SUBJECT TO  
16 THE TAX IMPOSED UNDER PART 2 OF THE INCOME TAX ACT OF 1967, 1967 PA  
17 281, MCL 206.1 TO 206.697, IN THE IMMEDIATELY PRECEDING TAX YEAR.  
18 THE AMOUNT CALCULATED UNDER THIS SUBDIVISION SHALL NOT BE LESS THAN  
19 ZERO.

20 (3) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2011, THE TAX  
21 LIABILITY OF A TAXPAYER THAT CLAIMS A CERTIFICATED CREDIT DESCRIBED  
22 IN SECTION 107(1)(F) SHALL BE DETERMINED BY SUBTRACTING THE TOTAL  
23 AMOUNT OF CERTIFICATED CREDITS THAT THE TAXPAYER IS ALLOWED TO  
24 CLAIM DURING THE TAX YEAR UNDER THIS ACT FROM THE AMOUNT OF THE  
25 TAXPAYER'S LIABILITY UNDER THIS ACT BEFORE THE APPLICATION OF THE  
26 CERTIFICATED CREDITS.

27 (4) IF THE RESULT OF THE CALCULATION UNDER SUBSECTION (2) IS A



House Bill No. 4362 (H-1) as amended April 27, 2011

1 **NEGATIVE, THEN THE TAXPAYER SHALL [BE REFUNDED THAT AMOUNT.**

2 ]

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

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