

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4362

A bill to amend 2007 PA 36, entitled
"Michigan business tax act,"
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:

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.

1 (B) A CREDIT FOR WHICH A PREAPPROVAL LETTER HAS BEEN ISSUED TO
2 A QUALIFIED TAXPAYER UNDER SECTION 437 BEFORE JANUARY 1, 2012 TO
3 THE EXTENT THE CREDIT HAS NOT BEEN FULLY CLAIMED OR PAID PRIOR TO
4 JANUARY 1, 2012.

5 (C) A CREDIT FOR WHICH A TAXPAYER OR A QUALIFIED TAXPAYER HAS
6 ENTERED INTO AN AGREEMENT WITH THE MICHIGAN ECONOMIC GROWTH
7 AUTHORITY UNDER SECTIONS 430, 431, 431A, 431B, 431C, 432, 434, OR
8 450 BEFORE JANUARY 1, 2012 TO THE EXTENT THE CREDIT HAS NOT BEEN
9 FULLY CLAIMED OR PAID PRIOR TO JANUARY 1, 2012.

10 (D) A CREDIT FOR WHICH A TAXPAYER OR ELIGIBLE PRODUCTION
11 COMPANY HAS ENTERED INTO AN AGREEMENT WITH THE MICHIGAN FILM OFFICE
12 WITH THE CONCURRENCE OF THE STATE TREASURER UNDER SECTION 455 OR
13 457 BEFORE JANUARY 1, 2012 TO THE EXTENT THE CREDIT HAS NOT BEEN
14 FULLY CLAIMED OR PAID BEFORE JANUARY 1, 2012.

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

21 (F) A CREDIT UNDER SECTION 433 BUT ONLY FOR A TAXPAYER THAT
22 HAS A DEVELOPMENT AGREEMENT EXECUTED BETWEEN A TAXPAYER AND THE
23 MICHIGAN STRATEGIC FUND BEFORE JANUARY 1, 2012 OR FOR A TAXPAYER
24 THAT HAS ENTERED INTO A QUALIFIED COLLABORATIVE AGREEMENT UNDER THE
25 MICHIGAN RENAISSANCE ZONE ACT, 1996 PA 376, MCL 125.2681 TO
26 125.2696, BEFORE JANUARY 1, 2012. AS USED IN THIS SUBSECTION,
27 "QUALIFIED COLLABORATIVE AGREEMENT" MEANS THAT TERM AS DEFINED IN

1 SECTION 3 OF THE MICHIGAN RENAISSANCE ZONE ACT, 1996 PA 376, MCL
2 125.2683.

3 (G) A CREDIT APPLICABLE TO THIS ACT GRANTED UNDER SECTION
4 36109 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT,
5 1994 PA 451, MCL 324.36109.

6 (H) A CREDIT ALLOWED A TAXPAYER UNDER SECTION 409 IF THE
7 TAXPAYER HAS MET THE CAPITAL EXPENDITURE REQUIREMENTS UNDER SECTION
8 409(3).

9 (2) ~~(1)~~—"Client" means an entity whose employment operations
10 are managed by a professional employer organization.

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

1 plans. Compensation for a taxpayer licensed under article 25 or 26
2 of the occupational code, 1980 PA 299, MCL 339.2501 to 339.2518 and
3 339.2601 to 339.2637, includes payments to an independent
4 contractor licensed under article 25 or 26 of the occupational
5 code, 1980 PA 299, MCL 339.2501 to 339.2518 and 339.2601 to
6 339.2637. Compensation does not include any of the following:

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

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

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

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

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

22 (4) ~~(3)~~—"Corporation" means a taxpayer that is required or has
23 elected to file as a corporation under the internal revenue code.

24 (5) ~~(4)~~—"Department" means the department of treasury.

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

27 (2) "Tax" means the tax imposed under this act, including

1 interest and penalties under this act, unless the term is given a
2 more limited meaning in the context of this act or a provision of
3 this act.

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

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

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

21 (4) "Tax year" means the calendar year, or the fiscal year
22 ending during the calendar year, upon the basis of which the tax
23 base of a taxpayer is computed under this act. If a return is made
24 for a fractional part of a year, tax year means the period for
25 which the return is made. Except for the first return required by
26 this act, a taxpayer's tax year is for the same period as is
27 covered by its federal income tax return. A taxpayer that has a 52-

1 or 53-week tax year beginning not more than 7 days before December
2 31 of any year is considered to have a tax year beginning after
3 December of that tax year. If the term tax year in this act is used
4 in reference to 1 or more previous or preceding tax years and those
5 referenced tax years are before January 1, 2008, then those
6 referenced tax years are deemed those same tax years during which
7 former 1975 PA 228 was in effect.

8 (5) "Taxpayer" means, **THROUGH DECEMBER 31, 2011**, a person or a
9 unitary business group liable for a tax, interest, or penalty under
10 this act. **BEGINNING JANUARY 1, 2012, TAXPAYER MEANS EITHER OF THE**
11 **FOLLOWING:**

12 (A) A PERSON OR UNITARY BUSINESS GROUP THAT HAS BEEN APPROVED
13 TO RECEIVE, HAS RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED
14 CREDIT BUT IS NOT SUBJECT TO THE TAX IMPOSED UNDER PART 2 OF THE
15 INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.713, AND
16 THAT ELECTS UNDER SECTION 500 TO FILE A RETURN AND PAY THE TAX
17 IMPOSED UNDER THIS ACT, IF ANY.

18 (B) A PERSON OR UNITARY BUSINESS GROUP THAT HAS BEEN APPROVED
19 TO RECEIVE, HAS RECEIVED, OR HAS BEEN ASSIGNED A CERTIFICATED
20 CREDIT AND THAT ELECTED UNDER SECTION 680 OF THE INCOME TAX ACT OF
21 1967, 1967 PA 281, MCL 206.680, TO FILE A RETURN AND PAY THE TAX
22 IMPOSED UNDER THIS ACT, IF ANY. IF A PERSON OR UNITARY BUSINESS
23 GROUP THAT ELECTS UNDER SECTION 680 OF THE INCOME TAX ACT OF 1967,
24 1967 PA 281, MCL 206.680, TO FILE A RETURN AND PAY THE TAX IMPOSED
25 UNDER THIS ACT IS PART OF A UNITARY BUSINESS GROUP AS DEFINED UNDER
26 THIS ACT, THE UNITARY BUSINESS GROUP AS DEFINED UNDER THIS ACT
27 SHALL FILE THE RETURN AND PAY THE TAX, IF ANY, UNDER THIS ACT.

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

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

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

19 Sec. 409. (1) For tax years that begin on or after January 1,
20 2008 and end before January 1, 2013, an eligible taxpayer may claim
21 a credit against the tax imposed by this act equal to the amount of
22 capital expenditures in this state on infield renovation,
23 grandstand and infrastructure upgrades, and any other construction
24 and upgrades, subject to the following:

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

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

4 (2) Subject to the limitation provided under this subsection,
5 for tax years that begin on or after December 1, 2012 and end
6 before January 1, 2017, an eligible taxpayer may claim a credit
7 against the tax imposed by this act equal to the amount of capital
8 expenditures in this state on infield renovation, grandstand and
9 infrastructure upgrades, and any other construction and upgrades.
10 The credit allowed under this subsection shall not exceed
11 \$1,580,000.00 or the taxpayer's tax liability under this act.

12 ~~before the calculation of the credit allowed under subsection (3),~~
13 ~~whichever is less.~~

14 ~~—— (3) In addition to the credit allowed under subsection (1),~~
15 ~~for the 2009 tax year an eligible taxpayer may claim a credit~~
16 ~~against the tax imposed by this act equal to 50% of the amount of~~
17 ~~necessary expenditures in this state incurred including any~~
18 ~~professional fees, additional police officers, and any traffic~~
19 ~~management devices, to ensure traffic and pedestrian safety while~~
20 ~~hosting the requisite motorsports events each calendar year. For~~
21 ~~the 2010 tax year and each tax year after 2010, an eligible~~
22 ~~taxpayer may claim a credit against the tax imposed by this act~~
23 ~~equal to all of the necessary expenditures in this state incurred~~
24 ~~including any professional fees, additional police officers, and~~
25 ~~any traffic management devices, to ensure traffic and pedestrian~~
26 ~~safety while hosting the requisite motorsports events each calendar~~
27 ~~year. If the amount of the credit allowed under this subsection~~

1 ~~exceeds the tax liability of the taxpayer for the tax year that~~
2 ~~excess shall be refunded.~~

3 (3) ~~(4)~~—To be eligible to claim the credit allowed under
4 subsection (1), an eligible taxpayer shall expend at least
5 \$30,000,000.00 on capital expenditures before January 1, 2011. To
6 be eligible to claim the credit allowed under subsection (2), an
7 eligible taxpayer shall, in addition to the expenditures required
8 to claim the credit under subsection (1), expend, at a minimum, an
9 additional \$32,000,000.00 on capital expenditures as follows:

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

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

15 (4) ~~(5)~~—As used in this section:

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

17 (i) A person who owns and operates a motorsports entertainment
18 complex and has at least 2 days of motorsports events each calendar
19 year which shall be comparable to NASCAR Nextel cup events held in
20 2007 or their successor events.

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

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

27 (b) "Motorsports entertainment complex" means a closed-course

1 motorsports facility, and its ancillary grounds and facilities,
2 that satisfies all of the following:

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

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

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

12 (iv) Engages in tourism promotion.

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

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

18 (d) "Sanctioning body" means the American motorcycle
19 association (AMA); auto racing club of America (ARCA); championship
20 auto racing teams (CART); grand American road racing association
21 (GRAND AM); Indy racing league (IRL); national association for
22 stock car auto racing (NASCAR); national hot rod association
23 (NHRA); professional sports car racing (PSR); sports car club of
24 America (SCCA); United States auto club (USAC); Michigan state
25 promoters association; or any successor organization or any other
26 nationally or internationally recognized governing body of
27 motorsports that establishes an annual schedule of motorsports

1 events and grants rights to conduct the events, that has
2 established and administers rules and regulations governing all
3 participants involved in the events and all persons conducting the
4 events, and that requires certain liability assurances, including
5 insurance.

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

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

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

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

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

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

27 (2) For direct production expenditures or qualified personnel

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

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

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

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

19 (3) An eligible production company intending to produce a
20 qualified production in this state, or that initiated production of
21 a qualified production after February 29, 2008 and before April 8,
22 2008, may submit an application to enter into an agreement under
23 this section to the Michigan film office. Except for a qualified
24 production for which production was initiated after February 29,
25 2008 and before April 8, 2008, direct production expenditures and
26 qualified personnel expenditures incurred prior to approval of an
27 agreement under this section are not eligible for the credit under

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

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

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

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

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

26 (e) If the qualified production is a long-form narrative film
27 production, a requirement that the qualified production include an

1 acknowledgement that the qualified production was filmed in this
2 state.

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

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

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

14 (a) The potential that in the absence of the credit the
15 qualified production will be produced in a location other than this
16 state.

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

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

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

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

27 (5) If the Michigan film office determines that an eligible

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

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

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

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

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

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

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

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

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

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

27 (a) The number of applications received for a credit under

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

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

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

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

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

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

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

26 (11) A taxpayer that willfully submits information under this
27 section that the taxpayer knows to be fraudulent or false shall, in

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

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

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

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

25 (c) The amount of money spent by each eligible production
26 company identified in subdivision (b) to produce each qualified
27 production in this state and a breakdown of all production spending

1 by all companies classified as goods, services, or salaries and
2 wages in the immediately preceding calendar year.

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

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

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

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

27 (h) The amount known by the Michigan film office of other

1 state and local assistance provided to eligible production
2 companies in addition to the tax credit under this section.

3 (13) As used in this section:

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

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

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

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

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

1 nonrecourse loans negotiated by the eligible production company to
2 obtain the rights to the intellectual property.

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

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

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

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

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

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

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

27 (I) Preproduction, production, or postproduction costs

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

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

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

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

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

18 (B) Payment to a personal services corporation or professional
19 employer organization for the services of a performing artist or
20 crew member if the personal services corporation or professional
21 employer organization is subject to the tax levied under this act
22 on the portion of the payment qualifying for the tax credit under
23 this section and the payments received by the performing artist or
24 crew member that are subject to taxation under the income tax act
25 of 1967, 1967 PA 281, MCL 206.1 to ~~206.532~~ 206.697, and are
26 withheld and paid to this state in the amount provided under
27 section 351 of the income tax act of 1967, 1967 PA 281, MCL

1 206.351.

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

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

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

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

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

25 (i) "Postproduction expenditure" means a direct expenditure
26 for editing, Foley recording, automatic dialogue replacement, sound
27 editing, special or visual effects including computer-generated

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

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

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

18 (ii) Payment to a personal services corporation or professional
19 employer organization for the services of a performing artist or
20 crew member if the personal services corporation or professional
21 employer organization is subject to the tax levied under this act
22 on the portion of the payment qualifying for the tax credit under
23 this section and the payments received by the performing artist or
24 crew member that are subject to taxation under the income tax act
25 of 1967, 1967 PA 281, MCL 206.1 to ~~206.532~~ 206.697, and are
26 withheld and paid to this state in the amount provided under
27 section 351 of the income tax act of 1967, 1967 PA 281, MCL

1 206.351.

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

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

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

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

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

27 (v) A production that primarily consists of political

1 advertising.

2 (vi) A radio program.

3 (vii) A weather show.

4 (viii) A financial market report.

5 (ix) A talk show.

6 (x) A game show.

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

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

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

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

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

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

20 **SEC. 500. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2),**
21 **A TAXPAYER DESCRIBED UNDER SECTION 117(5)(A) OR UNDER SECTION 680**
22 **OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.680, THAT**
23 **VOLUNTARILY ELECTS FOR THE TAXPAYER'S FIRST TAX YEAR ENDING AFTER**
24 **DECEMBER 31, 2011 TO FILE A RETURN AND PAY THE TAX IMPOSED BY THIS**
25 **ACT IN ORDER TO CLAIM A CERTIFICATED CREDIT OR ANY UNUSED**
26 **CARRYFORWARD FOR THAT TAX YEAR SHALL CONTINUE TO FILE A RETURN AND**
27 **PAY THE TAX IMPOSED UNDER THIS ACT FOR EACH TAX YEAR THEREAFTER**

1 UNTIL THAT CERTIFICATED CREDIT AND ANY CARRYFORWARD FROM THAT
2 CREDIT IS USED UP. IF A PERSON AWARDED A CERTIFICATED CREDIT IS A
3 MEMBER OF A UNITARY BUSINESS GROUP, THE UNITARY BUSINESS GROUP, AND
4 NOT THE MEMBER, SHALL FILE A RETURN AND PAY THE TAX, IF ANY, UNDER
5 THIS ACT AND CLAIM THE CERTIFICATED CREDIT.

6 (2) A TAXPAYER WITH A CERTIFICATED CREDIT UNDER SECTION 435 OR
7 437, WHICH CERTIFICATED CREDIT OR ANY UNUSED CARRYFORWARD MAY BE
8 CLAIMED IN A TAX YEAR ENDING AFTER DECEMBER 31, 2011 MAY ELECT TO
9 PAY THE TAX IMPOSED BY THIS ACT IN THE TAX YEAR IN WHICH THAT
10 CERTIFICATED CREDIT MAY BE CLAIMED IN LIEU OF THE TAX IMPOSED UNDER
11 PART 2 OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO
12 206.713. IF A PERSON WITH A CERTIFICATED CREDIT UNDER SECTION 435
13 OR 437 THAT ELECTS UNDER THIS SUBSECTION TO PAY THE TAX IMPOSED BY
14 THIS ACT IS A MEMBER OF A UNITARY BUSINESS GROUP, THE UNITARY
15 BUSINESS GROUP, AND NOT THE MEMBER, SHALL FILE A RETURN AND PAY THE
16 TAX, IF ANY, UNDER THIS ACT AND CLAIM THAT CERTIFICATED CREDIT.

17 (3) A TAXPAYER WITH A CERTIFICATED CREDIT UNDER SECTION 435 OR
18 437 THAT ELECTS UNDER SUBSECTION (2) AFTER THE TAXPAYER'S FIRST TAX
19 YEAR ENDING AFTER DECEMBER 31, 2011 TO PAY THE TAX IMPOSED BY THIS
20 ACT MAY CLAIM ANY OTHER CERTIFICATED CREDIT THAT TAXPAYER WOULD BE
21 ELIGIBLE FOR IN THE YEAR IN WHICH THE TAXPAYER CLAIMS A
22 CERTIFICATED CREDIT UNDER SECTION 435 OR 437, BUT NOT ANY
23 CERTIFICATED CREDIT THAT WOULD HAVE ACCRUED IN ANY YEAR BEFORE THE
24 ELECTION UNDER SUBSECTION (2). WHEN THE TAXPAYER'S CERTIFICATED
25 CREDIT UNDER SECTION 435 OR 437 THAT WAS THE BASIS FOR THE
26 TAXPAYER'S ELECTION UNDER SUBSECTION (2) IS EXTINGUISHED, THE
27 TAXPAYER IS NO LONGER ELIGIBLE TO PAY THE TAX UNDER THIS ACT AND

1 MAY NO LONGER CLAIM ANY OTHER REMAINING CERTIFICATED CREDITS.

2 (4) FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2011, A
3 TAXPAYER'S TAX LIABILITY UNDER THIS ACT, AFTER APPLICATION OF ALL
4 CREDITS, DEDUCTIONS, AND EXEMPTIONS, SHALL BE THE GREATER OF THE
5 FOLLOWING:

6 (A) THE AMOUNT OF THE TAXPAYER'S TAX LIABILITY UNDER THIS ACT,
7 NOTWITHSTANDING THE CALCULATION REQUIRED UNDER THIS SECTION, AFTER
8 APPLICATION OF ALL CREDITS, DEDUCTIONS, AND EXEMPTIONS AND ANY
9 CARRYFORWARD OF ANY UNUSED CREDIT AS PRESCRIBED IN THIS ACT.

10 (B) AN AMOUNT EQUAL TO THE TAXPAYER'S TAX LIABILITY AS
11 COMPUTED PURSUANT TO PART 2 OF THE INCOME TAX ACT OF 1967, 1967 PA
12 281, MCL 206.601 TO 206.713, AFTER APPLICATION OF ALL CREDITS,
13 DEDUCTIONS, AND EXEMPTIONS UNDER PART 2 OF THE INCOME TAX ACT OF
14 1967, 1967 PA 281, MCL 206.601 TO 206.713, AS IF THE TAXPAYER WERE
15 SUBJECT TO THE TAX IMPOSED UNDER PART 2 OF THE INCOME TAX ACT OF
16 1967, 1967 PA 281, MCL 206.601 TO 206.713, LESS THE AMOUNT OF THE
17 TAXPAYER'S CERTIFICATED CREDITS, INCLUDING ANY UNUSED CARRYFORWARD
18 OF A CERTIFICATED CREDIT, THAT THE TAXPAYER WAS ALLOWED TO CLAIM
19 FOR THE TAX YEAR UNDER THIS ACT. HOWEVER, IN CALCULATING THE AMOUNT
20 UNDER THIS SUBDIVISION, THE FOLLOWING APPLY:

21 (i) A TAXPAYER DESCRIBED UNDER SECTION 117(5)(A) SHALL NOT
22 INCLUDE ANY BUSINESS LOSS FOR ANY PRIOR YEAR IN WHICH THE TAXPAYER
23 WAS NOT SUBJECT TO THE TAX LEVIED UNDER THIS ACT.

24 (ii) A TAXPAYER SHALL NOT INCLUDE ANY NONREFUNDABLE
25 CERTIFICATED CREDIT TO THE EXTENT THAT CREDIT EXCEEDS THE
26 TAXPAYER'S TAX LIABILITY. ANY NONREFUNDABLE CREDIT REMAINING AFTER
27 APPLICATION OF THE LIMITATION IN THIS SUBPARAGRAPH MAY BE CARRIED

1 FORWARD.

2 (5) IF THE RESULT OF THE CALCULATION UNDER SUBSECTION (4) IS
3 NEGATIVE, THE TAXPAYER SHALL BE REFUNDED THAT AMOUNT.

4 (6) A TAXPAYER WITH A CERTIFICATED CREDIT UNDER SECTION 435 OR
5 437 THAT ELECTS TO PAY THE TAX UNDER THIS ACT MAY ELECT TO CLAIM A
6 REFUNDABLE CREDIT AS PROVIDED UNDER SECTION 510. IF A REFUNDABLE
7 CREDIT IS CLAIMED UNDER SECTION 510, THAT CREDIT SHALL NOT BE USED
8 TO CALCULATE A TAXPAYER'S TAX LIABILITY UNDER SUBSECTION (4).

9 SEC. 510. (1) IF A CERTIFICATE OF COMPLETION, ASSIGNMENT
10 CERTIFICATE, OR COMPONENT COMPLETION CERTIFICATE IS ISSUED UNDER
11 SECTION 437 TO A TAXPAYER OR IF A CERTIFICATE OF COMPLETED
12 REHABILITATION, ASSIGNMENT CERTIFICATE, OR REASSIGNMENT CERTIFICATE
13 IS ISSUED UNDER SECTION 435 TO A TAXPAYER, THE TAXPAYER MAY ELECT
14 TO CLAIM A REFUNDABLE CREDIT FOR 90% OF THE AMOUNT OF THAT
15 CERTIFICATE OR ANY CARRYFORWARD REMAINING FROM THAT CERTIFICATE,
16 WHICHEVER IS LESS. THE CLAIM MAY BE FILED BEFORE THE END OF THE TAX
17 YEAR, AND THE DEPARTMENT SHALL PAY THE REFUNDABLE CREDIT WITHIN 60
18 DAYS AFTER RECEIVING THE CLAIM. A TAXPAYER CLAIMING A CREDIT UNDER
19 THIS SECTION SHALL FORGO THE REMAINING 10% OF THE CREDIT.

20 (2) IF SECTION 437 OR 435 PROVIDES THAT PAYMENT OF A CREDIT
21 WILL BE MADE OVER A PERIOD OF YEARS OR LIMITS THE ANNUAL AMOUNT OF
22 A PAYMENT, A REFUNDABLE CREDIT MAY ONLY BE CLAIMED UNDER SUBSECTION
23 (1) FOR THE AMOUNT PAYABLE IN THE YEAR CLAIMED. A TAXPAYER MAY
24 ELECT TO CLAIM A REFUNDABLE CREDIT UNDER SUBSECTION (1) IN EACH
25 YEAR THAT A CREDIT IS PAYABLE UNDER SECTION 437 OR 435.
26 NOTWITHSTANDING THE FOREGOING, A TAXPAYER MAY ELECT UNDER
27 SUBSECTION (1) TO CLAIM THE BALANCE OF A REFUNDABLE CREDIT AWARDED

1 UNDER SECTION 435(20), BUT THE AMOUNT OF THAT REFUND SHALL BE EQUAL
2 TO 86% OF THE AMOUNT OF THE CREDIT AND THE TAXPAYER SHALL FORGO THE
3 REMAINING 14% OF THE CREDIT.

4 (3) NOTWITHSTANDING THE PROVISIONS OF SECTION 437(18) AND
5 SECTION 435(9), FOR TAX YEARS ENDING AFTER DECEMBER 31, 2011, A
6 TAXPAYER MAY NOT CLAIM A REFUNDABLE CREDIT UNDER SECTION 437(18) OR
7 SECTION 435(9) AND MAY ONLY CLAIM A REFUNDABLE CREDIT UNDER
8 SECTIONS 437 AND 435 AS PROVIDED IN SUBSECTION (1).

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

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