

MICHIGAN BUSINESS TAX ACT (EXCERPT)
Act 36 of 2007

***** 208.1459 THIS SECTION IS REPEALED BY ACT 90 OF 2019 EFFECTIVE FOR TAX YEARS THAT BEGIN AFTER DECEMBER 31, 2031 *****

208.1459 Eligible production company; tax credit.

Sec. 459.

(1) Until September 30, 2015, 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 for qualified job training expenditures, as provided under this section. To qualify for the credit under this section, a company shall meet all of the following requirements:

(a) Make qualified job training expenditures for a state certified qualified production.

(b) After completion of the production of the state certified qualified production in this state, submit to the office an application in a form determined by the office with information regarding the qualified job training expenditures, including employment, salary, and related information required by the office.

(c) Receive a qualified job training expenditures certificate from the office under subsection (5).

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

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

(2) Before the effective date of the amendatory act that added this language, for a qualified job training expenditure made by a company, the company may claim a tax credit equal to 50% of the qualified job training expenditure. On and after the effective date of the amendatory act that added this language, for a qualified job training expenditure made by a company, the company may claim a tax credit of up to 50% of the qualified job training expenditure as determined by the Michigan film office, with the concurrence of the state treasurer. A company 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 455.

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

(c) A direct expenditure, or qualified personnel expenditure, for which another taxpayer claims a credit under this section, a credit under section 455, or a credit under section 367 of the income tax act of 1967, 1967 PA 281, MCL 206.367.

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

(a) A unique number assigned to the state certified qualified production for which qualified job training expenditures were incurred by the company.

(b) A detailed description of the state certified qualified production and the qualified job training expenditures.

(c) A requirement that the company provide the office with the information and independent certification the office and the department deem necessary to verify qualified job training expenditures and eligibility for the credit under this section.

(4) In determining whether to authorize a credit under this section, the Michigan film office and the state treasurer shall consider all of the following:

(a) The extent to which the state certified qualified production and qualified job training expenditure may have the effect of promoting economic development or job creation in this state.

(b) The extent to which the credit may assist in attracting additional private investment for the production of motion pictures, videos, television programs, and digital media in this state.

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

(5) If the Michigan film office determines that a company has complied with the terms of an agreement entered into under this section, the office shall issue a qualified job training expenditure certificate to the company. The company shall submit a request to the office for a qualified job training expenditure certificate on a form prescribed

by the office, along with any information or independent certification the office or the department deems necessary. The office shall process each request within 60 days after the request is complete. However, the office may request additional information or independent certification before issuing a certificate and need not issue the certificate until satisfied that qualified job training expenditures and eligibility are adequately established. The additional information requested may include a report of expenditures audited and certified by an independent certified public accountant. Each qualified job training expenditure certificate shall be signed by the Michigan film commissioner and shall include the following information:

- (a) The name of the taxpayer.
- (b) A description of the state certified qualified production and the qualified job training expenditures.
- (c) The amount of the company's qualified job training expenditures for the state certified qualified production.
- (d) The date on which production of the state certified qualified production began in this state, the date on which production of the state certified qualified production ended in this state, the total number of production days in this state, and the approximate total crew size for the state certified qualified production.

- (e) The company's credit amount.
- (f) The unique number assigned to the state certified qualified production by the office under subsection (3).
- (g) The company's federal employer identification number or Michigan treasury number.
- (h) Any independent certification required by the department or the Michigan film office.
- (6) Information, records, or other data received, prepared, used, or retained by the Michigan film office under this section that are submitted by an eligible production company and considered by the taxpayer and acknowledged by the office as confidential shall not be subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246. Information, records, or other data shall only be considered confidential to the extent that the information or records describe the commercial and financial operations or intellectual property of the company, the information or records have not been publicly disseminated at any time, and disclosure of the information or records may put the company at a competitive disadvantage.

- (7) To claim a credit under this section, a company shall submit a qualified job training expenditure certificate issued under subsection (5) to the department. If the credit allowed under this section exceeds the amount of taxes owed by the company under this act for a tax year, that portion of the credit that exceeds the tax liability of the company for the tax year shall not be refunded but may be carried forward as a credit against tax liability under this act in subsequent tax years for a period not to exceed 10 tax years.

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

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

- (10) As used in this section:

- (a) "Below the line crew" means persons employed by an eligible production company for state certified qualified production expenditures made after production begins and before production is completed, including, but not limited to, a best boy, boom operator, camera loader, camera operator, assistant camera operator, compositor, dialogue editor, film editor, assistant film editor, focus puller, Foley operator, Foley editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound editor, sound effects editor, sound mixer, steadicam operator, first assistant camera operator, second assistant camera operator, digital imaging technician, camera operator working with a director of photography, electric best boy, grip best boy, dolly grip, rigging grip, assistant key for makeup, assistant key for hair, assistant script supervisor, set construction foreperson, lead set dresser, assistant key for wardrobe, scenic foreperson, assistant propmaster, assistant audio mixer, assistant boom person, assistant key for special effects, and other similar personnel. Below the line crew does not include a producer, director, writer, actor, or other similar personnel.

- (b) "Eligible production company" means that term as defined in section 455.

- (c) "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.

- (d) "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.

- (e) "Qualified job training expenditure" means salary and other expenditures paid by an eligible production company to provide qualified personnel with on-the-job training as a member of the below the line crew for a state certified qualified production that is intended to upgrade or enhance the skills of the qualified personnel and address deficiencies in skills among residents of this state as determined by the office.

- (f) "Qualified personnel" means a person who has resided in this state for not less than 12 months, who has legal status for employment, and who demonstrates sufficient prior experience or training in the film and digital media industry, as certified by the Michigan film office. Qualified personnel includes, but is not limited to, a person who

has completed a training program at a Michigan proprietary school licensed by the department of labor and economic growth that offers a program of instruction in film and video production and has been designated with a classification of instructional programs code of 50 by the department of labor and economic growth and a person in an advanced crew position that meets the residency requirements of this subdivision and is hired and mentored by a key or supervisor. Qualified personnel do not include a person with fewer than 1 or more than 4 film credits in the same below the line crew position for which the eligible production company claimed a credit under this section.

(g) "Qualified personnel expenditure" means that term as defined under section 455.

(h) "State certified qualified production" means that term as defined in section 455.

History: Add. 2008, Act 74, Imd. Eff. Apr. 8, 2008 ;-- Am. 2011, Act 77, Imd. Eff. July 12, 2011

Compiler's Notes: Enacting section 1 of Act 77 of 2011 provides: "Enacting section 1. Sections 409, 455, and 510 of the Michigan business tax act, 2007 PA 36, MCL 208.1409, 208.1455, and 208.1510, as amended by this amendatory act, are retroactive and effective May 26, 2011. This provision is curative and is intended to express the original intent of the legislature concerning the application of 2011 PA 39."

Popular Name: MBT