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Michigan Enacts "Best in the Nation" Tax Incentives for Film Production Companies

On April 7, 2008, Michigan's governor Granholm signed into law a package of fourteen bills designed to make Michigan a destination for filmmakers by offering a collection of incentives that have been characterized as the most generous in the nation.

The package of bills provides bold incentives aimed at diversifying Michigan's economy by encouraging the production of motion pictures, television programs, music videos, interactive games, and similar productions in Michigan. The bills provide tax credits for production costs, job training and investment in production infrastructure. In addition, the bills provide for state financed loans and the possibility of the free use of state and local government property for production purposes.

Note: In general, a production company should apply for and enter into an agreement with the appropriate State agency before conducting or announcing an intention to conduct any activity in Michigan.

The cornerstone of these incentives is a 40-42% tax credit which is available on production related expenditures. This tax credit is refundable so an eligible production company will realize the full benefit of the credit even if its amount exceeds the company's Michigan tax liability. This credit is also assignable/transferrable.

While much of the attention has been focused on the 40-42% tax credit for production expenditures, there are other incentives available to production companies wishing to do a project in Michigan as well as to those who would like to invest in permanent production facilities in Michigan. Below are some of the highlights of the incentives.

Tax Incentives

Production Expenditures Tax Credit

- ▶ Production companies will be eligible to receive a refundable and transferable (assignable) tax credit against the Michigan Business Tax ("MBT") or Michigan income tax as appropriate for qualified film or digital media pre-production, production, and post-production costs incurred in Michigan.
- ▶ Qualified productions include motion pictures, documentaries, television programming, music videos, interactive games, video games, commercials, internet programming, sound recordings, videos, digital animation and interactive websites.
- ▶ The credit is not available for productions of television news or sports programs, awards shows, political propaganda, employee training films and productions with the primary purpose of fund-raising.
- ▶ Credits are available in the following amounts:
 - 40% of "direct production expenditures" (which exclude "qualified personnel expenditures");
 - 42% if the expenditures are made in any of 103 designated Michigan "core communities;" and
 - 30% of qualified personnel expenditures (generally compensation paid to non-Michigan residents working on production activities other than a producer, director, writer, actor or similar personnel).

- ▶ Direct production expenditures are those related to development, pre-production, production or post-production and include expenditures for purchases of equipment, material or services; use of facilities, soundstages or studios and location fees; catering, food and lodging; use of vehicles, including chartered aircraft based in Michigan used for transportation in the State; commercial airfare purchased through a Michigan-based travel agency for travel to and from and within the State; insurance coverage or bonding if purchased from a Michigan-based insurance agent; compensation paid to employees, including wages, benefits and fees for talent, management or labor who performed services in Michigan (capped at \$2 million per person); distribution, including costs related to creation of trailers, marketing videos, commercials, point-of-purchase videos and purchase of equipment relating to the duplication or market distribution of any content created or produced in Michigan; and other production costs in accordance with generally accepted entertainment industry practices.
- ▶ The production company must spend at least \$50,000 in Michigan and production must begin within 90 days of the date of the agreement (can be extended for an additional 90 days for good cause).

Infrastructure Investment Tax Credit

- ▶ Persons may receive a nonrefundable 25% tax credit against the MBT for “base investment” in a “qualified film or digital media infrastructure project” in Michigan.
- ▶ A qualified film or digital media infrastructure project is a film, video, television, or digital media production and post-production facility as well as property, equipment and any other support facility related to the primary facility.
- ▶ Base investment is the cost, including fabrication and installation, paid or accrued in the taxable year of tangible, depreciable assets physically located in Michigan for use in a business activity in Michigan. It excludes expenditures that qualify for the production expenditure tax credit.
- ▶ In order to be eligible for the credit, a person must spend in excess of \$100,000 (increases to \$250,000 beginning January 1, 2009).
- ▶ This credit is assignable or may be carried forward to offset MBT liability for up to 10 years.

- ▶ The aggregate annual maximum amount of infrastructure investment tax credits to be granted by the State in any given year is \$20 million.
- ▶ The taxpayer may not file a claim for the credit until at least 25% of the base investment in the project has been spent; construction on the project must begin within 180 days of the date of the agreement (can be extended for an additional 90 for good cause); and if the Taxpayer sells the assets acquired by the base investment, the taxpayer must repay an amount equal to 25% of the gross proceeds adjusted as prescribed.

Job Creation Tax Credit

- ▶ Michigan Economic Growth Authority (“MEGA”) may enter into an agreement with a business that proposes to retain jobs or create qualified new jobs in film and digital media production for a refundable credit against the MBT under the existing MEGA tax incentive programs.
- ▶ To be eligible, a business must create and maintain a minimum number of qualified new jobs in Michigan, retain a minimum number of jobs, and/or make a certain level of new capital investment. These new job minimums range from five in the first year and 25 by the fifth year for certain high-technology jobs to 100 new jobs for companies previously based out-of-state.
- ▶ The tax credits may be awarded for up to 20 years and up to an amount equal to 100% of the Michigan personal income tax generated by the new workers.
- ▶ This credit is not tie-barred to the other credits offered under these bills so expenditures for which these credits are received may also be eligible for credits under the other bills.

Film & Digital Media Worker Job Training Tax Credit

- ▶ Production companies may be eligible for a 50% nonrefundable, nonassignable MBT tax credit for expenditures incurred for salary and other expenditures paid to “qualified personnel.”
- ▶ “Qualified personnel” means a person who has resided in Michigan for at least 12 months and who demonstrates prior experience or training in the film and digital media industry, as certified by the Michigan Film Office.

Financing Incentives

As of the date of this Bulletin, none of the following financing programs had been funded by the State. It is anticipated that they will not be available until fiscal 2009.

Michigan Film and Digital Media Investment Loan Program

- ▶ It is intended that loans will be available from the Michigan Strategic Fund for up to \$15 million per qualifying production. Loans would have market interest rates with possible participation by the Jobs for Michigan Investment Fund in lieu of interest. Terms of loans would be negotiable; however, loans must have a guarantor and a majority of the below-the-line crew on the production must be Michigan residents.

Choose Michigan Film and Digital Media Loan Fund

- ▶ A qualified production company would be eligible to receive loans up to an amount nearly equal to the film production tax incentives it is eligible to receive. The loans would have an interest rate of at least 1%, the minimum loan amount would be \$500,000 and the maximum loan term would be 10 years.

Jobs Fund Capital Access Program

- ▶ Qualified production companies would be eligible to participate in the Capital Access Program ("CAP") established by the Michigan Strategic Fund pursuant to which participating Michigan banks would offer CAP loans directly to production companies. The bank, the production company, and the Michigan Strategic Fund each pay a small premium into a reserve that makes it possible for the production company to receive fixed asset and working capital financing in the form of a private loan from the bank.

Other Incentives

Free Use of State Property

- ▶ The State has authorized its agencies as well as local units of government to permit film and digital media production companies to have free use of property owned or under their control for productions. Use of such property is subject to terms and conditions established by the applicable State agency or local government.

Important Conditions and Limitations

All of the incentives require that a production company or other eligible person enter into an agreement with the appropriate State agency (usually, the Michigan Film Office and the Michigan Department of Treasury) before incurring any eligible production expenses. Therefore, a production company may not take advantage of the incentives without first applying to the appropriate state agency, receiving approval and entering into an agreement.

The Film Office requires that a production company submit certain documents with its application (e.g. a budget, including estimated Michigan expenditures; and a copy of the script/storyboard) as well as a small application fee. When considering whether to enter into an agreement with a production company, the Film Office and Treasury Department will consider, among other things, the extent to which the project will promote economic development and job creation, attract other productions and investment in Michigan, and help develop the movie industry in the State.

For the production expenditures, infrastructure investment and job training credits, the State will withhold a redemption fee of 0.5% of the credit eventually claimed.

Dykema Advantage

Dykema is uniquely positioned to assist production companies and other eligible persons wishing to take advantage of Michigan's new film incentives. Dykema is a full service law firm with more than 450 lawyers and professionals; 223 of which are based in and throughout Michigan. In addition, Dykema is the only law firm with a significant presence in Michigan that also has an office in Los Angeles.

Furthermore, Dykema has a cross-functional team of lawyers and other professionals from a variety of practice areas to specifically assist production companies wishing to come to Michigan. The Dykema team includes experienced practitioners in the fields of tax, entertainment, contracts, employment, real estate, finance, governmental policy and intellectual property. Our attorneys are available to assist production companies with any need. And, by using Michigan-based attorneys, legal expenses will likely be eligible for the 40-42% production expenditures tax credit.

Whether a production company is looking for counsel related to a single Michigan-based project or to permanent facilities located in the State, experienced Dykema attorneys are available to provide whatever level of service is required.

Michigan Film Production



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This Bulletin describes only the highlights of Michigan's new film incentives, is not intended to be, and cannot be relied upon as legal advice for any purpose. Furthermore, the rules and forms for some of the incentives are still being finalized.

For more information about these incentives or our Michigan Film Incentives Practice, please contact Douglas Parker at (248) 203-0703, Wayne Roberts at (616) 776-7514 or Sherrill Wolford at (313) 568-6849.