

### "Take 2" Michigan Remakes its Film Financing Incentives

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The past year has seen major changes in the programs Michigan offers the film industry to encourage industry investment in the state. Since April 2008, the legislature has passed several statutory incentives that make Michigan a premiere location for film production and studio facility location. Recognizing that other states have provided substantial tax incentives to the film industry, the Michigan Legislature made Michigan's film incentives the most generous and most competitive in the country. A significant aspect of the Michigan program is that the tax credits available for a qualified production are refundable and transferable, making them useful as a financing tool.

#### **Production-Related Incentives**

##### *Production Credit*

To qualify for the tax credits, a production must be approved by the Michigan Film Office. Once a production is approved, it is eligible for a tax credit of 40% of the amount it spends in "qualified eligible production expenditures," with an additional 2% if filming takes place in a "core community." [1] For qualified personnel expenditures, the tax credit is 30%. This is in comparison to a 25% tax rebate in New Mexico, a 35% refundable tax credit in New York, and a nonrefundable tax credit of 30% in Illinois.

The credits are not limited to feature-length movies. A qualified production can also include a documentary, television programming, music videos, interactive games, video games, commercials, internet programming, internet videos, sound recordings, video, digital animation, or interactive websites, trailers, pilots, video teasers, or demos created primarily for marketing purposes. Excluded from the credit program are advertising, talk shows, game shows, news broadcasts, awards shows, live sporting events or other productions that are not of substantial artistic merit.

Once a project is deemed qualified and the production company signs an agreement with the Film Office, it can move forward with the production process. It must document its personnel and production expenditures to verify that the expenditures claimed qualify for a tax credit under the statute. Assuming the expenses qualify, once the project is complete, the production company must apply for a certificate of completion with the Film Office. Once the certificate is received, the production company files it with its tax return and may take a credit against its Michigan tax liability up to the total amount listed in the agreement between the company and the Film Office.

#### **Job Training Credit**

In addition to the refundable, assignable production credit, the state offers a tax credit of 50% of a production company's qualified job training expenditures. "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.

Qualified personnel must have been a Michigan resident for at least 12 months, demonstrate sufficient prior experience or training in the film and digital media industry, and cannot be an undocumented worker. The training must be intended to improve or augment employee skills and must address an insufficiency in skills among Michigan residents.

### **Infrastructure Incentives**

Given the generosity of the incentives offered, a studio may consider a more permanent presence in the state. If a company decides to invest in brick and mortar production facilities, the state offers a tax credit for certain expenses made for film infrastructure projects. This incentive is available until 2015, and requires a minimum \$250,000 investment.

A facility project must also be approved by the Michigan Film Office. In determining whether to approve the project, the Film Office will consider:

- whether, in the absence of the credit, the qualified project would be constructed somewhere other than Michigan;
- the extent to which the project may promote economic development or job creation in Michigan;
- the extent to which the credit will attract private investment for motion picture, video, television program, and digital media production; and
- the extent to which the credit will encourage the development of film, video, television, and digital media production and postproduction facilities in Michigan.

Once the project is completed, the production company must submit a request for an investment expenditure certificate to the Michigan Film Office. The Film Office will review the project certification materials and, if adequate and complete, issue an investment expenditure certificate to the taxpayer within 60 days after the request is complete.

Other traditional incentives may be layered with these film-industry specific incentives, such as the brownfield credit, job creation credits, and personal and real property tax exemptions. The availability and value of these incentives is dependent upon the project specifications and the particular site location.

### **Non-Tax Assistance**

In addition to financial incentives, many Michigan localities have created film offices to assist a production company in site location, community relations, obtaining necessary permitting, police and fire assistance, and vendor identification. Local colleges and universities are developing training programs for below-the-line positions. Also, the Michigan Strategic Fund is authorized to make loans to the film and digital media industry under two industry-specific programs:

- The "loan enhancement program" authorizes the Michigan Strategic Fund to make market-rate loans of up to 80% of the tax credits the production is expected to receive, secured by the tax credits. This program limits the loan amount for one production to \$15,000,000.
  - The "Choose Michigan" fund is also authorized to provide loans to production companies or private equity funds. Under this program, the minimum interest rate is 1% and the minimum loan amount is \$500,000.
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Finally, the Michigan Strategic Fund may provide loan guarantees to financial institutions that provide commercial loans to qualified businesses, including eligible production companies. It also may provide loans under the small business capital access program, even if the production company is not a small business. This assistance can be key to financing a project.

### **Miller Canfield Can Assist With Your Production**

The State of Michigan and many local governments have made a concerted effort to welcome the film and digital media industry with open arms. Generous business income tax credits, including a refundable production tax credit, combined with the assistance provided by local film offices and the variety of locations makes Michigan a great place to consider a film or digital media production.

Whether you are seeking to make a film in Michigan, considering a long-term investment in infrastructure in the State, or are considering tax credit finance as a borrower or a lender, Miller Canfield has an experienced legal team ready to assist you in maximizing the return on your investment.

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[1] A core community is defined as certain cities or townships with a median family income of 150% or less of the statewide median family income per the 1990 census that meet additional criteria. Certain rural areas with populations over 500 people may also qualify as a core community. Michigan currently has 103 designated core communities. These include urban areas such as Detroit and Flint, as well as smaller communities throughout the state, such as Cheboygan, in Northern Lower Michigan, and Manistique, in the Upper Peninsula.

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