

MICHIGAN Film Production FAQs

GENERAL

What is the Michigan film incentive?

The film incentive, officially called the film production credit, is a refundable, assignable tax credit of up to 42% of the amount of a production company's expenditures (depending upon type) that are incurred in producing a film or other media entertainment project in Michigan.

Who qualifies?

The film production credit is available to "eligible production companies;" that is, entities that are "in the business of producing qualified productions." The term "production" popularly means an entire movie or media entertainment project. The term "production company" therefore refers to the company that bears the overall responsibility for making (or producing) the movie or other entertainment project as a whole. Companies that are vendors to a production company do not qualify for the credit.

What is the difference between the 40% credit and the 42% credit?

Qualifying expenditures made in a designated Core Community in Michigan are eligible for a 42% credit. Qualifying expenditures made in a "non-core" community in Michigan are eligible for a 40% credit. The Michigan Film Office has the list of qualifying Core Communities on their website, along with a Michigan map showing their locations.

Is above the line talent covered as well as below the line?

Yes. Compensation payments made to above the line personnel, such as producers, directors, writers, and actors, are "direct production expenditures" eligible for the 40% – 42% credit amount. Compensation payments made to below the line personnel, such as technical crew members, may be either "qualified personnel expenditures" eligible for the 30% credit amount, or "direct production expenditures" eligible for the 40% – 42% credit.

Who qualifies for 30%?

Compensation payments made by a production company to below the line personnel who were not residents of Michigan for at least 60 days before approval of the agreement between the production company and the Michigan Film Office will be "qualified personnel expenditures" eligible for a 30% credit.

Who qualifies for 40%?

Compensation payments to above the line personnel regardless of residency, as well as compensation payments made to below the line personnel who were residents of Michigan for 60 days or more before approval of the agreement between the production company and the Film Office will be direct production expenditures eligible for a 40% – 42% credit.

What does it mean to be a resident?

A below the line crew member will be considered a resident if they are in Michigan for more than 60 days before an agreement is approved. Residency must be proven with a Michigan driver's license or a Michigan voter's registration card.

When may an eligible production company claim a film production tax credit pursuant to section 455 of the Michigan Business Tax Act ("MBTA"). MCL 208.1455?

In order to claim a film production tax credit, an eligible production company must submit a postproduction certificate of completion signed by the Film Commissioner to the Department of Treasury, together with its Michigan Business Tax ("MBT") return for the applicable tax year. MCL 208.1455(7). The Michigan Film Office will issue a postproduction certificate signed by the Film Commissioner – the document that actually entitles the production company to a film production tax credit in a specified dollar amount – to an eligible production company after a thorough review of that company's written request. Eligible production companies must submit form "MFO 004-2008" titled "Post-Production Certificate of Completion Request" to the Michigan Film Office to obtain a signed postproduction certificate. Both the form and information on audit requirements are available at the Film Office web site at <http://www.michiganfilmoffice.org/For-Producers/Incentives/Default.aspx>.

The Department of Treasury has determined that an eligible production company must claim or assign a film production tax credit received pursuant to section 455 of the MBTA in the tax year in which the postproduction certificate, signed by the Film Commissioner, is issued by the Michigan Film Office. An eligible production company may not claim the credit on its MBT tax return for a prior tax year (whether or not an MBT return for that year has already been filed), and similarly, the company may not choose to hold onto the credit and claim or assign it in a later tax year.

In recognition of the confusion that appears to exist in the business community at the time this FAQ is being published, the Department of Treasury will consider written requests from eligible production companies seeking exceptions to the policy expressed above in instances where the eligible production company can demonstrate significant hardship as the result of following the policy; however, exceptions will be granted only for tax years that begin prior to December 1, 2009. The expressed policy will be adhered to for all tax years beginning on or after December 1, 2009, with exceptions granted only in instances where delay in issuance of the postproduction certificate is caused by an error of the Michigan Film Office or Department of Treasury.

Once eligible production companies have submitted their applications for a postproduction certificate, they should allow approximately 60 days for review of the application as provided in statute (MCL 208.1455(5)), assuming the application and required supporting documentation is complete and additional information is not required. Statute also provides that should additional information be required, the review may take longer than 60 days (MCL 208.1455(5)).

DIRECT PRODUCTION EXPENDITURES

What is a “direct production expenditure”?

A qualifying “direct production expenditure” must satisfy four criteria. It must be i) made in this state, ii) not a qualified personnel expenditure, iii) directly attributable to the production or distribution of a “qualified production”, and iv) subject to taxation in this state.

What does “made in this state” mean?

In a general sense, it means the expenditure must directly benefit Michigan’s economy in some way, and that Michigan-based businesses are benefited rather than out-of-state businesses.

In a more specific sense, “made in this state” implies the following standards: i) tangible personal property and services must be acquired by the production company from a source within Michigan, and ii) services must be wholly performed within Michigan.

What does “a source within Michigan” mean? Can it be anyone who is doing business in any way in Michigan?

No. In order to qualify for film production credit purposes a “source within Michigan” must have an established physical presence that included both a non-temporary “bricks and mortar storefront” and at least one full time permanent employee.

Can it be a business that just started, say, a month ago?

Possibly. The requirements of “non-temporary” and “permanent” mean, generally, a presence of at least one year. The one year standard could be met with a prior presence as well as a planned future presence evidenced by a documented commitment, such as entering into a one year lease for office space.

What about “pass throughs”?

Simple pass through transactions will not qualify as “direct production expenditures” “made in this state”. However, in general, the existence of an added markup by the permanent Michigan business that is consistent with industry norms would suggest that the transaction has economic substance in Michigan and is not merely a pass through transaction. Therefore it is likely to qualify.

If a production company acquires the rights to a well-known cartoon character for use in a video game, would the fees or costs associated with licensing this character from its creator qualify as direct production expenditures that are eligible for the Film Production Credit?

No. Licensing the use of a cartoon character to appear in a video game does not qualify as a direct production expenditure eligible for the Film Production Credit. The payments made by the production company to the licensor for the use of the licensed cartoon character in the video game would be characterized as royalties, and the statute expressly provides that “royalties” do not qualify as “direct production expenditures.”

A production company owns the rights necessary to produce a video game, but plans to license use rights to a well-known cartoon character so that the character can appear in the game. Would the fees or costs associated with licensing this character from its creator qualify as direct production expenditures that are eligible for the Film Production Credit?

No. Pursuant to the MBT Film Production Credit, a qualifying “direct production expenditure” must be i) made in this state, ii) not a qualified personnel expenditure, iii) directly attributable to the production or distribution of a “qualified production,” and iv) subject to taxation in this state. MCL 208.1455(12)(c). With respect to intellectual property such as a cartoon character, the Film Production Credit provides that the following expenditures, if made to a vendor doing business in this state, are “direct production expenditures”:

Expenditures for optioning or purchasing intellectual property including, but not limited to, books, scripts, music or trademarks relating to the development or purchase of a script, story, scenario, screenplay, or format, including all expenditures generally associated with the optioning or purchase of intellectual property, including option money, agent fees, and attorney fees relating to the transaction, but not including deferrals, deferments, royalties, profit participation, or recourse or nonrecourse loans negotiated by the eligible production company to obtain the rights to the intellectual property.

MCL 208.1455(12)(c)(i)(A). While the term “intellectual property” is sufficiently broad to include cartoon characters, the language of the statute is clear that only expenditures related to “optioning or purchasing” the intellectual property at issue will qualify as “direct production expenditures.” “Purchasing” means acquiring full rights to the intellectual property outright, while “optioning” means purchasing the right to acquire full rights to the intellectual property at a later date, usually after financing for a production has been obtained. Licensing the use of a cartoon character to appear in a video game is not equivalent to “purchasing or optioning” the underlying intellectual property.

Moreover, the section expressly provides that “royalties” do not qualify as “direct production expenditures.” “Royalties” are commonly defined as usage-based payments made by a licensee to a licensor for ongoing use of an intellectual property right or other intangible asset. The payments made by the production company to the licensor for the use of the licensed cartoon character in the video game would be characterized as royalties. Accordingly, these payments would not qualify as “direct production expenditures” eligible for the Film Production Credit.

If the production company determined to purchase or option the acquisition of full rights to the cartoon character, however, such expenditures might qualify as “direct production expenditures.” In that case, however, the expenditures for such rights would also have to be “made in this state,” meaning, procured from a source within this state.

PAYROLL PROCESSING SERVICES

Can I obtain a credit for payroll processing services performed outside of Michigan?

No, only services performed entirely within Michigan qualify for the credit.

Would it qualify if the payroll processing company had an employee in Michigan to handle the data transfer?

No, because the service still is not being performed in Michigan. The payroll processing business would qualify only if the payroll services were entirely performed in Michigan.

Does the answer change if the payroll processing business is the “employer of record” for the employees whose payroll is being processed?

No, the nature of the transaction remains substantially that of payroll processing because the true employer of the employees whose payroll is being processed is the film production company

FRINGE BENEFITS

Are fringe benefits paid to crew members such as the employer's share of FICA, health insurance, and so forth eligible for the Film Production Credit?

Yes, the described fringe benefits are eligible for the Film Production Credit.

Are such expenditures considered "direct production expenditures" eligible for a 40% - 42% credit, or are they "qualified personnel expenditures" eligible for a 30% credit?

That depends on whether the crew members are above or below the line, and for below the line crew whether they are residents of Michigan.

Which type qualifies for the 40-42 percent?

Fringe benefits paid to above the line crew members, such as producers, directors, writers, and actors, as well as fringe benefits paid to below the line crew members who were residents of Michigan for 60 days or more before approval of the agreement between the production company and the Film Office, will be direct production expenditures eligible for a 40% - 42% credit.

And the 30 percent?

Fringe benefits paid to below the line crew members who were not residents of Michigan for at least 60 days before approval of the agreement between the production company and the Michigan Film Office are qualified personnel expenditures eligible for a 30% credit.

Are there restrictions on the amounts paid to any of these people?

Total payments to any one employee are capped for purposes of the credit at \$2,000,000 – regardless of whether the employee is a Michigan resident or not.

Why is there a difference?

To encourage production companies to employ Michigan residents, particularly when hiring below the line crew members.

INCOME TAX WITHHOLDING

Does a production company that fails to withhold or insure that the personal services company ("PSC") or professional employment organization ("PEO") withholds lose an otherwise available film credit?

Yes. An eligible production company that fails to properly withhold would be considered delinquent on an obligation to the state of Michigan, disqualifying it for the tax credit. An eligible production company must also ensure that any PSC or PEO that it employs to provide personnel withhold for the personnel to obtain the credit. This means that if the PSC or PEO do not withhold individual income tax then the eligible production company must withhold to qualify for the credit. An eligible production company will be considered delinquent if neither it nor the PSC or PEO withhold. The eligible production company, however, may cure a delinquency by paying the withholding. Upon payment its entitlement to the tax credit will be reinstated.

PRODUCTION INSURANCE

Does production insurance purchased from an out-of-state insurance company through a Michigan based broker/agent qualify as a direct production expenditure?

Yes, the law specifically provides credit for this type of expense as long as the company is indeed "Michigan based."

Define "Michigan-based" for insurance agents.

An insurance agent is based in Michigan if the insurance agent has a bricks and mortar storefront in Michigan with at least one full time employee and at least a one year Michigan presence.

NON-MICHIGAN PURCHASES

Does the purchase of tangible personal property purchased from a source outside of Michigan qualify for the credit if the seller collects and remits Michigan sales or use tax?

No. Only purchases from Michigan vendors qualify for the credit. Generally, that means a vendor that has been in business with a bricks and mortar storefront for at least one year and has at least one fulltime employee. Additionally purchases must be subject to Michigan tax. Paying tax on the transaction, in itself, is not enough to qualify for the credit.

SOUND RECORDING

Does a typical sound recording (for instance, the production of a music CD) qualify as a “qualified production” that is eligible for the Film Production Credit?

Yes. As long as it is produced in a digital media format, a typical sound recording will meet the statutory definition of a “qualified production” and be eligible for the Film Production Credit. Pursuant to the MBT Film Production Credit, a “qualified production” is defined as:

single media or multimedia entertainment content created in whole or in part in this state for distribution or exhibition to the public in 2 or more states by any means and media in any digital media format, film, or video tape, including, but not limited to, a motion picture, a documentary, a television series, a television miniseries, a television special, interstitial television programming, long-form television, interactive television, music videos, interactive games, video games, commercials, internet programming, an internet video, **a sound recording**, a video, digital animation, or an interactive website.

MCL 208.1455(12)(k) (emphasis added). The statutory definition further includes a detailed listing of production types that are specifically excluded from the meaning of “qualified production,” such as television news programs, live sporting event broadcasts, talk shows and game shows. MCL 208.1455(12)(k)(i) – (xiv). None of these exclusions relates to the production of a “sound recording,” which is separately defined as “a recording of music, poetry, or spoken-word performance, but does not include the audio portions spoken and recorded as part of a motion picture, video, theatrical production, television news coverage, or athletic event.” MCL 208.1455(12)(l).

Accordingly, as long as the project is not one of the specifically prohibited types of sound recordings and it otherwise meets applicable statutory requirements (for example, the requirement that the production company spend at least \$50,000 in this state on production costs, MCL 208.1455(1)(a)), the production of a typical sound recording, such as a music CD, will be eligible for the Film Production Credit. However, the definition of “qualified production” specifies that the content be created “by any means and media in any digital media format, film, or video tape” Because productions of sound recordings do not utilize film or video tape, an eligible sound recording would have to be produced using a digital media format.

RENTALS

Is the rental of specialized motion picture equipment from a vendor located outside Michigan (and whose inventory is also located outside Michigan) a qualified direct production expenditure?

No.

What if the rental is handled by a Michigan based rental vendor?

Yes, in that case, if the transaction occurs between the qualified film production company and a Michigan based rental business the expenditure would qualify for credit. However, the transaction must have economic substance and not merely be a pass through transaction.

How is that determined?

A transaction has economic substance if there is an industry norm markup by the Michigan vendor, and would be further demonstrated if the Michigan vendor and the non-Michigan vendor were unrelated.

TAX RETURN FILING

Is a taxpayer required to file an MBT tax return in order to obtain a film credit or refund?

Yes, a taxpayer is required to file an MBT return in order to obtain a film credit or refund.

If so, may the return be filed early (before the end of the return year)?

No, the MBT return may not be filed before the end of the return year. A taxpayer must file its annual return at the end of the return year to claim the credit, and any refund.

If the taxpayer files at the end of the return year, assuming there are no glitches with the return, when can the refundable tax credit be expected?

You can expect an error-free return to be processed within 3-4 weeks of filing.

RECIPROCITY WITH MICHIGAN

If an employee on a production is a resident of a state with a reciprocal tax agreement with Michigan (i.e. Illinois, Indiana, Ohio, Kentucky, Wisconsin and Minnesota), and no Michigan tax is withheld, are wages paid to the employee eligible for the film credits even though there is no withholding as a result of the reciprocal agreement?

Yes, if all other requirements are met. The statutory requirement that an expenditure must be “subject to taxation under the income tax” is considered met.

INTEREST ON FILM PRODUCTION LOAN

Is a production company’s interest expense associated with production financing eligible for film production credit?

Yes, provided that 1) the financing is obtained from a bank or other lender with a bricks and mortar storefront and at least one full time employee and one year of physical presence in Michigan, and 2) all loan services are performed in Michigan, and 3) an appropriate rate of interest is charged to the production company.

If so, does capitalized interest qualify?

No, as only expenditures qualify for the credit and under capitalized interest payment is deferred to a future date.

Does interest that continues to accrue post-Michigan activity qualify?

Only interest actually paid up to the point in time a post production credit certificate is requested will qualify.

AMENDMENT OF PRODUCTION COMPANY ESTIMATED EXPENDITURES (BUDGET)

What process and procedures should be followed when a production company underestimates their budget and seeks an increase to a previously approved credit?

Production companies should send a letter to the Film Office with a revised budget, revised total and Michigan expenditures, and identifying the new credit they are seeking. The letter should be signed by an authorized representative.

How will additional credits be granted?

Approval of additional credits is not automatic. The State will respond with a letter authorizing additional credits if the request is approved.

Will expenditures made before the State authorized the additional credit amount qualify for credit?

Expenditures made prior to written approval by the State will not qualify for credit.

PER DIEMS, LIVING ALLOWANCES, CAR AND MEAL ALLOWANCES

Are per diem expenses, living allowances, and car and meal allowances eligible for film production credits?

No, because they are generally not subject to taxation as the law requires. However, to the extent that the payment exceeds federal income tax limits and is considered taxable for federal purposes the excess will be eligible for credit.

BOX RENTALS

Are box rental expenses paid to employees eligible for film production credits?

Yes, because they are generally subject to taxation as required by law. However, if they are not subject to federal income tax it is likely they will not be subject to Michigan tax and therefore will not qualify for credit.

WORKERS' COMPENSATION INSURANCE

Are workers' compensation insurance expenditures eligible for film credit?

Workers' compensation insurance is considered a fringe benefit, and fringe benefits are generally eligible for film credit as wages or compensation.

REFUND OF FILM PRODUCTION CREDITS

Must a Michigan Business Tax annual return be filed to obtain a refund of a film production credit?

Yes, because Michigan's film credit incentive is a tax credit under the MBT and must be established through the filing of a tax return.

EXPENDITURES PRIOR TO AGREEMENT APPROVAL

Will expenditures made prior to approval of a film production credit agreement be eligible for credit?

Only expenditures for productions that were begun between February 28, 2008 and April 7, 2008 will be eligible for credit when the expenditure is made prior to approval of a film production credit agreement.

Link: [Additional Department of Treasury Film Credit FAQs](#)

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