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BILL ANALYSIS

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House Bill 5849 (Substitute H-1 as passed by the House)
Sponsor: Representative Marc Corriveau
House Committee: Commerce
Senate Committee: Commerce and Tourism

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CONTENT

The bill would amend the Michigan Business Tax (MBT) Act to allow the Michigan Film Office, with the State Treasurer's concurrence, until September 30, 2015, to enter into an agreement with an eligible production company granting it an MBT credit equal to 50% of qualified job training expenditures. The bill also would:

- **Require a taxpayer to apply to the Film Office for a tax credit and pay an application fee.**
- **Specify factors the Film Office and the State Treasurer would have to consider in determining whether to authorize a credit.**
- **If a company complied with its agreement, require the Film Office to issue a qualified job training expenditure certificate, which the company would have to submit to the Department of Treasury to claim its credit.**
- **Require a company's credit to be reduced by a credit application and redemption fee of 0.5% of the credit.**
- **Provide that a taxpayer would be liable for a civil penalty equal to its credit for willfully and knowingly submitting false or fraudulent information.**
- **Require fee revenue and civil penalties to be deposited into a proposed Michigan Film Promotion Fund.**

Credit Criteria

Until September 30, 2015, the Michigan Film Office, with the concurrence of the State

Treasurer, could enter into an agreement with an eligible production company providing it with an MBT credit for qualified job training expenditures. To qualify for the credit, a company would have to meet all of the following requirements:

- Make qualified job training expenditures for a State-certified qualified production.
- After completion of the production in this State, submit to the Office an application with information regarding the qualified job training expenditures, including employment, salary, and related information the Office requested.
- Receive a qualified job training expenditure certificate.
- Submit the certificate to the Department of Treasury.

Also, the company could not be delinquent in a tax or other obligation owed to this State or be owned by or under common control of an entity that was delinquent in a tax or other obligation owed to the State.

The bill would define "qualified job training expenditure" as 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 intended to upgrade or enhance the skills of the qualified personnel and address deficiencies in skills among Michigan residents, as determined by the Film Office.

"Qualified personnel expenditure" would mean that term as defined in Section 455. (House Bill 5841 (H-1) would add that

section to allow the Film Office to enter into an agreement with an eligible production company granting it an MBT or income tax credit. The bill would define "qualified personnel expenditure" as an expenditure made in Michigan directly attributable to the production or distribution of a qualified production that is a transaction subject to taxation in this State and is a payment or compensation payable to below-the-line crew for below-the-line crew members who were not residents of Michigan for at least 60 days before approval of the agreement for the qualified production, not to exceed \$2.0 million for any one employee or contractual or salaried employee who performs service in Michigan for the production of a qualified production.)

"Qualified personnel" would mean a person who has resided in Michigan for at least 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 Film Office. The term would include a person who has completed a training program at a Michigan proprietary school licensed by the Department of Labor and Economic Growth (DLEG) 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 DLEG, and a person in an advanced crew position who meets the bill's residency requirements and is hired and mentored by a key or supervisor. The term would not include a person with fewer than one or more than four film credits in the same below-the-line crew position for which the eligible company claimed a credit under the bill.

"Below the line crew" would mean people employed by an eligible production company for State-certified qualified production expenditures made after production begins and before production is completed, including a best boy, boom operator, camera loader or operator, compositor, dialogue or film editor, focus puller, foley operator or editor, gaffer, grip, key grip, lighting crew, lighting board operator, lighting technician, music editor, sound or sound effects editor, sound mixer, steadicam operator, assistant camera operator or film editor, first or second assistant camera operator, digital imaging technician, camera operator working with a director of photography,

electric best boy, grip best boy, dolly or rigging grip, assistant key for makeup, hair, wardrobe, or special effects, assistant script supervisor, set construction foreperson, lead set dresser, scenic foreperson, assistant propmaster, audio mixer, or boom person, and similar personnel. The term would not include a producer, director, writer, actor, or similar personnel.

"Eligible production company" would mean that term as defined in Section 455 of the MBT Act. (House Bill 5841 (H-1) would define the term as an entity in the business of producing qualified productions. It would not include an entity that is more than 30% owned, affiliated, or controlled by an entity or individual who is in default on a loan made or guaranteed by this State or by any other state.)

"State certified qualified production" also would mean that term as defined in Section 455. (House Bill 5841 (H-1) would define "state certified qualified production" or "qualified production" as single media or multimedia entertainment content created in whole or in part in this State for distribution or exhibition to the general public in two or more states by any means and media in any digital media format, film, or video tape, including a motion picture, a documentary, a television series or miniseries, a television special, interstitial television programming, long-form television, interactive television or games, music videos, video games, commercials, internet programming, an internet video, a sound recording, a video, digital animation, or an interactive website.

The term would include a trailer, pilot, video teaser, or demo created primarily to stimulate the sale, marketing, promotion, or exploitation of future investment in a production.

The term would not include the production of any of the following:

- A production for which records must be maintained with respect to any performer in the production under 18 USC 2257 (which concerns sexually explicit visual depictions).
- A production that includes obscene matter or an obscene performance.
- A production that primarily consists of televised news or current events, a live sporting event, or political advertising.

- A radio program.
- A weather show, talk show, or game show.
- A financial market report.
- A production that primarily markets a product or service, other than a State-certified qualified production.
- An awards show or other gala event production.
- A production with the primary purpose of fund-raising.
- A production that primarily is for employee training or in-house corporate advertising or other similar production.)

Credit Application & Determination

A taxpayer seeking a credit under House Bill 5849 (H-1) could submit to the Michigan Film Office an application to enter into an agreement. The application would have to be submitted before the taxpayer made qualified job training expenditures, and be accompanied by a \$100 application fee and all of the information and records the Office requested. The fee would have to be deposited in the Michigan Film Promotion Fund (which House Bill 5850 (H-1) would create). The Office could not process an application until it was complete.

If the Office, with the State Treasurer's concurrence, determined to enter into an agreement, it would have to provide for all of the following:

- A unique number assigned to the State-certified qualified production for which the company incurred qualified job training expenditures.
- A detailed description of the production and the expenditures.
- A requirement that the company provide the Office with the information and independent certification the Office and the Department considered necessary to verify qualified job training expenditures and eligibility for the MBT credit.

In determining whether to authorize a credit, the Film Office and the State Treasurer would have to consider all of the following:

- The extent to which the State-certified qualified production and job training expenditure could have the effect of promoting economic development or job creation in Michigan.

- The extent to which the credit could assist in attracting additional private investment for the production of motion pictures, videos, television programs, and digital media in this State.
- The extent to which the credit would encourage the development of film, video, television, and digital media production and postproduction expertise in the State.

Credit Amount

An eligible production company could claim a tax credit equal to 50% of a qualified job training expenditure made by the company.

The amount of the credit would have to be reduced by a credit application and redemption fee equal to 0.5% of the credit claimed. The fee would have to be deducted from the credit otherwise payable to the taxpayer and be deposited by the Department in the Michigan Film Promotion Fund.

A company could not claim a credit for any of the following:

- A direct expenditure, or qualified personnel expenditure, for which the company claimed a credit under Section 455 of the MBT Act.
- A direct expenditure, or qualified personnel expenditure, for which the company claimed a credit under Section 367 of the Income Tax Act.
- A direct expenditure, or qualified personnel expenditure, for which another taxpayer claimed a credit under the bill, Section 455 of the MBT Act, or Section 367 of the Income Tax Act.

(Under House Bill 5841 (H-1), Section 455 of the MBT Act would allow an eligible production company to claim an MBT credit or an income tax credit for direct production expenditures or qualified personnel expenditures. House Bill 5844 would add Section 367 to the Income Tax Act to allow an eligible production company to claim an income tax credit for the amount allowed under Section 455 of the MBT Act.)

Certificate

If the Michigan Film Office determined that a company had complied with the terms of an agreement under the bill, the Office would

have to issue a qualified job training expenditure certificate to the company. The company would have to submit a request to the Office for a certificate, along with any information or independent certification the Office or the Department considered necessary.

The Office would have to process the request within 60 days after it was complete. Before issuing a certificate, however, the Office could request additional information or independent certification, and would not have to issue the certificate until the Office was satisfied that qualified job training expenditures and eligibility were adequately established. The additional information requested could include a report of expenditures audited and certified by an independent certified public accountant.

Each certificate would have to be signed by the Michigan Film Commissioner and include the following:

- The name of the taxpayer.
- A description of the State-certified qualified production and the qualified job training expenditures.
- The amount of the company's qualified job training expenditures for the production.
- The unique number assigned to the production by the Office.
- The company's Federal employer ID number or Michigan Treasury number.
- Any independent certification required by the Office or the Department.

The certificate also would have to include the date on which production of the State-certified qualified production began in Michigan, the date on which production ended in the State, the total number of production days in the State, and the approximate total crew size for the production.

Claiming the Credit

To claim a credit, a company would have to submit a qualified job training expenditure certificate to the Department.

If the credit exceeded the amount of taxes owed by the company under the MBT Act for a tax year, the excess portion could not be refunded but could be carried forward as a

credit against tax liability for up to 10 subsequent tax years.

A company would have to claim the credit under the bill after all other credits under the MBT Act.

Penalty

If a taxpayer willfully submitted information under the bill that the taxpayer knew was fraudulent or false, the taxpayer would be liable for a civil penalty equal to the amount of the credit, in addition to any other penalties provided by law. The penalty would have to be deposited in the Michigan Film Promotion Fund.

Confidentiality

Information, records, and other data received, prepared, used, or retained by the Michigan Film Office that were submitted by an eligible production company, and considered by the taxpayer and acknowledged by the Film Office as confidential, would not be subject to the disclosure requirements of the Freedom of Information Act. Information, records, or other data could be considered confidential only to the extent that the information or records described the commercial and financial operations or intellectual property of the company, the information or records had not been publicly disseminated at any time, and disclosure could put the company at a competitive disadvantage.

Proposed MCL 208.1459

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would decrease State General Fund revenue by an unknown and potentially significant amount, depending on the job training expenditures affected and the number of agreements the State entered into. While not tie-barred to other bills affecting similar taxpayers, the bill would exclude certain expenditures eligible for credits under the other bills. Expenditures under House Bill 5849 (H-1) also would qualify for the compensation credit under existing law. Credits under the bill would be applied after all other credits and would be nonrefundable, but could be carried forward for up to 10 years. Generally, taxpayers

would be assumed to pursue the combination of credits and expenditures that would minimize their total tax liability. The circumstances affecting that combination are likely to vary from taxpayer to taxpayer. However, the effective credit rate for affected expenditures would be 50% under the bill, suggesting that for such expenditures, the bill's provisions would be used over those in the other related bills, where the effective credit rate is generally less. The exception is that some of those other bills propose refundable credits. As a result, to the extent a taxpayer had little or no Michigan business tax liability, the expenditures would be claimed under the other bills.

According to data from the Michigan Film Office, eight movies have been filmed in Michigan in the last two years. If all eight films had applied for the credit proposed in House Bill 5849 (H-1) in the same year, the bill would have increased revenue by \$800. The State also would have received 0.5% of credits claimed as a "credit redemption fee". Revenue from both the credit and the credit redemption fee would be deposited in the Michigan Film Promotion Fund.

Expenditures that would qualify for the credit would be only for individuals who had been Michigan residents for at least one year. Compensation costs often average approximately 50% of a film's production costs, although the share of those costs consisting of compensation to below-the-line crew is unknown, as are the costs of any training provided to such personnel. The production costs of recent films filmed in Michigan varied significantly, ranging from \$125 million for *The Island* and \$150 million for *Transformers* to \$4.0 million for *Bowling for Columbine* and \$6.5 million for *Narc*. Under the assumption that training costs eligible for the bill's credit would comprise 3% of total production costs, the bill would have reduced General Fund revenue by \$4.5 million for *Transformers* and \$3.8 million for *The Island*, but only \$120,000 for *Bowling for Columbine* and \$195,000 for *Narc*.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.