

## Michigan Film and Digital Media Incentive FAQs

### What is the Michigan film and digital media incentive?

The film and digital media incentive, officially called the Film and Digital Media Assistance Program, is a reimbursement toward a production company's eligible expenditures of \$100,000 or more for direct production expenditures, Michigan personnel expenditures, crew personnel expenditures or qualified personnel expenditures (MCL 125.2029h) paid in producing a film or digital media project in Michigan.

### Who qualifies?

The film production credit is available to "eligible production companies," meaning entities that are "in the business of producing qualified productions, or for interactive games, in the business of developing interactive games." The term "production" commonly means an entire movie or media entertainment project. The term "production company" therefore refers to a 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 incentive.

### What types of projects qualify?

Motion pictures, documentaries, television series, television miniseries, television specials, interstitial television programming, long-form television, interactive television, music videos, interactive games, Internet programming, Internet videos, sound recordings, digital animation, interactive websites and/or any trailer, pilot, video teaser for demo created primarily to stimulate the sale, marketing or promotion of future investment in a production.

Projects that **do not** qualify: productions that include obscene matter or an obscene performance, televised news or current events show, a live sporting event, political advertising, a radio show, a weather show, financial market report, an awards show or other gala event production, a production with the primary purpose of fund-raising, employee training, in-house corporate advertising, or similar production.

### What expenditures qualify?

- **Michigan Personnel Expenditures** qualify for a 32% refund of eligible expenditures in 2012 to 2015. Michigan Personnel Expenditures mean expenditures made in this state for compensation to Michigan residents for both Above and Below the Line talent, management, and labor. Michigan Personnel Expenditures shall not exceed \$2 million per employee per project. Payments and compensation to all producers of a qualified production who reside in the state shall not exceed 10% of the direct production expenditures and Michigan personnel expenditures. Michigan Personnel must be residents of this state and must have a Michigan driver's license, state identification card, or voter registration card. Production companies are required to complete a Michigan Residency Form for each person they intend to qualify. This incentive is only offered for Michigan residents performing work within the state. Work performed outside the state will not qualify, even if the work is directly related to the qualified production and is performed by Michigan residents. The percentage offered for Michigan Personnel Expenditures will be reduced to 27% beginning January 1, 2015.
- **Crew Personnel Expenditures** qualify for a 25% refund of eligible expenditures in 2012. Crew Personnel Expenditures mean expenditures made in this state for compensation to nonresident Below the Line talent, management, and labor not to exceed \$2 million per employee per project. Crew Personnel Expenditures will be reduced 5% annually until 2015.

- **Qualified Personnel Expenditures** qualify for a 27% refund of eligible expenditures from 2012 to 2015. Qualified Personnel Expenditures mean expenditures made in this state for compensation to nonresident Above the Line talent, management and labor not to exceed \$2 million per employee per project. Payments and compensation to all producers of a qualified production who do not reside in the state shall not exceed 5% of the direct production expenditures and Michigan personnel expenditures. Qualified Personnel Expenditures will be reduced to 12% beginning January 1, 2015.
- **Direct Production Expenditures** qualify for a 27% refund of eligible expenditures from 2012 to 2015. Direct Production Expenditures mean development, preproduction, production or post-production expenditures attributable to a qualified production and subject to taxation in the state. All expenditures for tangible personal property and services must be made in this state, are not qualified personnel expenditures, are directly attributable to the production or distribution of the qualified production, and are subject to taxation in Michigan. "Made in this state" means tangible personal property and services must be acquired from a "source within this state." A "source within this state" means a vendor with at least one year of physical presence in this state, including both a physical bricks-and-mortar storefront or office and at least one full time permanent employee, or a vendor that has clearly demonstrated an intent to establish the requisite physical presence in this state, provided that the required physical presence and the transaction at issue have a demonstrable nexus. The bricks-and-mortar facility must be sufficient to conduct operations for the type of services and materials the vendor provides. With respect to purchases of tangible personal property, a "source within this state" means a vendor that satisfies the preceding requirements and is one who regularly sells or leases property of the kind purchased. A vendor with physical presence in the state of Michigan unrelated to the transaction at issue is not a "source within this state."

Transactions constituting direct production expenditures must have true economic substance in this state. Out-of-state expenditures are not direct production expenditures that are "made in this state," even if the costs are passed through a third-party entity in this state. If an item of tangible personal property is not available from a source within this state, a vendor with the requisite physical presence in this state and who regularly sells or leases property of that kind may qualify as a "source within this state" and may obtain the property from an out-of-state vendor and sell or lease it to the eligible production company. The expenditure will then not be considered an out-of-state production expenditure.

An affidavit will be provided online by the Michigan Film Office at [www.michiganfilloffice.org](http://www.michiganfilloffice.org) for an eligible production company to use for vendors who may need to obtain equipment from out of state.

Direct production expenditures **do not** include payments made by an eligible production company to its parent company, affiliate, subsidiary or joint venture partner, or other related entity for goods or services, except where such payments are for transactions entered into pursuant to arms-length negotiation and which reflect a commercially reasonable market price for such goods or services purchased.

Direct production expenditures **do not** include:

- a prize payable to participants in a game show.
- an expenditure for entertainment, amusement, or recreation.
- an expenditure of more than \$2,500 for jewelry or artwork.

Please see attached Film and Digital Media Incentive Schedule of Eligible Expenditures for the specific direct production expenditure schedule.

### **Are finance fees an eligible “direct production expenditure”?**

Yes. The interest and finance fees associated with a production loan will generally be eligible for the Film Production Incentive if the expense otherwise satisfies the requirements of a “direct production expenditure,” including the requirement that the expenditure be “made in this state.” “Made in this state,” as it relates to finance fees, means that the financing must be obtained by a production company from a bank or other lender physically located in Michigan and that all loan services are performed in Michigan.

In addition, the entity from which the financing is obtained must be a non-interested commercial lender; that is, a public, private or institutional entity with the requisite level of physical presence in Michigan that is not related to or affiliated with the production company or any above-the-line production crew or cast member, and whose principal business activity is lending money to individuals and businesses. The production financing must be a bona fide loan, payable by the production company. In order for the interest and finance fees to qualify, the loan document must state that the loan proceeds will be spent in Michigan. A bona fide loan is generally evidenced by an enforceable promissory note with clear repayment obligations, bearing a market-related rate of interest, and secured by collateral.

Further, interest and finance fees will only qualify to the extent they are booked in accordance with generally accepted accounting principles.

### **Are insurance and bonding eligible “direct production expenditures”?**

Yes. Insurance coverage or bonding will be eligible only if obtained by the production company from an insurance agent both licensed and physically located in Michigan, and if all policy-related services are performed in Michigan.

### **Is travel an eligible “direct production expenditure”?**

Yes. Commercial airfare to or within the state is eligible if purchased through a Michigan travel agency and is directly attributable to a qualified production. Charter aircraft is eligible if used within the state and is directly attributable to a qualified production. Chartered aircraft is ineligible for transportation outside of this state. Out of state travel bookings (hotels, limousine services, etc.) do not qualify, even if acquired through a Michigan travel agency.

### **Are box rentals eligible “direct production expenditures”?**

Because a qualifying expenditure must be "subject to taxation in this state," box or kit rentals will be eligible for the film production credit, provided that the employee in question receives compensation for his or her provision of tools or other equipment to the production company that is reported on the employee's W-2 form, or on a separate Form 1099, and is subject to Michigan income tax. This requirement applies whether the employee is employed directly by the production company, or indirectly through a loan-out company. If the taxability requirement stated above is met, it is not necessary for the employee to charge the production company sales tax on the box rental fee. Also, it makes no difference for credit eligibility purposes whether some or all of the supplies provided pursuant to the box rental may be fully expended during the course of the production.

### **Are production services companies eligible for the incentive?**

Yes. A “production services company” means an entity that contracts with the eligible production

company to provide some or all of the preproduction, production or post-production work on a qualified production. Expenditures made by an eligible production company to a production services company doing business in this state may be direct production expenditures eligible for the incentive, provided that the expenditures are not merely passed through the production services company for the purpose of evading the requirement that eligible expenditures be “made in this state.” Accordingly, to be direct production expenditures eligible for the incentive, expenditures made by an eligible production company to a production services company must meet the definition of “made in this state,” and the underlying expenditures incurred by the production services company must also meet the definition of “made in this state.”

### **Is there an additional incentive for utilizing Michigan infrastructure?**

Yes, an eligible production can obtain an additional 3% incentive on Direct Production Expenditures and Michigan Personnel Expenditures for a production “produced at” at a Qualified Facility or Post-Production Facility.

A Qualified Facility means a permanent facility in the state equipped for motion pictures, television shows, and digital media that meets **all** of the following requirements:

- Includes more than 1 soundstage.
- Includes not less than 3,000 square feet of contiguous, column-free space for production activities with a height of at least 12 feet.
- Includes any grid and sufficient built-in electric service for shooting without the need of portable electric generators.
- The facility must also have been issued an Investment Expenditure Certificate under Section 457 of the Michigan Business Tax Act (MCL 208.1457) or served as the location of a state certified qualified production for which a Post-Production Certificate was awarded under Section 455 of the Michigan Business Tax Act (MCL 208.1455), or both.

A Qualified Post-Production Facility means a permanent facility within the state equipped for the post-production of motion pictures, television shows, or digital media production that meets **all** of the following requirements:

- Includes at least 3,000 square feet of contiguous work space.
- Includes at least 8 work stations.
- The facility must also have been issued an Investment Expenditure Certificate under Section 457 of the Michigan Business Tax Act (MCL 208.1457) or served as the location of a state certified qualified production for which a Post-Production Certificate was awarded under Section 455 of the Michigan Business Tax Act (MCL 208.1455), or both.

“Produced at” means utilizing a qualified Facility or qualified Post-Production Facility to create or produce the qualified productions. This would include production offices set up at a qualified Facility or qualified Post-Production Facility for new qualified productions. The qualified production will be eligible for the additional 3% incentive based on the number of days it utilizes the facility. Recordkeeping to support the days utilized will be required reporting.

If a qualified production does not have production offices at a qualified Facility or qualified Post-Production Facility and it does not utilize the facility for other production work, it will not be eligible for the additional 3%, even if it utilizes vendors renting space from the facility.

### **Examples:**

- Production Company A is approved for an incentive for the project “*Project A*”. Production Company A establishes their production offices at Qualified Facility A. They plan to utilize the facility for the duration of the production. “*Project A*” will shoot on both location and at stages available at Qualified Facility A. They will be eligible for the additional 3% incentive on Direct Production Expenditures and Michigan Personnel Expenditures (*changed order*)(see definition above) for the duration of the contract with Qualified Facility A. This contract will be closely reviewed during the audit process.
- Production Company B is approved for the project “*Project B*”. Production Company B establishes their production offices at a location other than a Qualified Facility. They plan to utilize stages at Qualified Facility B. They will be eligible for the additional 3% incentive on Direct Production Expenditures and Michigan Personnel Expenditures (see definition above) for the duration of the contract with Qualified Facility B. This contract will be closely reviewed during the audit process.
- Production Company C is approved for “*Project C*”. Production Company C establishes their production offices at a location other than a Qualified Facility. They do not plan to utilize any infrastructure at Qualified Facility C. They do plan to rent equipment from a vendor that is located at Qualified Facility C. They will **NOT** be eligible for the additional 3% incentive, even though the vendor is located at the Qualified Facility.
- Production Company D is approved for post-production work for “*Project D*”. They have contracted with qualified Post-Production Facility D for the work. The additional 3% incentive will be based on the contracted amount and can only be applied towards Direct Production Expenditures and Michigan Personnel Expenditures (see definition above). This contract will be closely reviewed during the audit process.

**Are there any special requirements related to producers of a qualified production?**

Yes. Payments and compensation to all producers of a Qualified Production who reside in this state cannot exceed 10% of the Direct Production Expenditures and Michigan Personnel Expenditures combined.

Payments and compensation to all producers of a Qualified Production who do not reside in this state cannot exceed 5% of the Direct Production Expenditures and Michigan Personnel Expenditures combined.

Services must be rendered in this state.

A “Producer” means an individual without regard to his or her actual title or screen credit involved in or responsible for any of the following:

- Funding or financing in whole or in part, or arranging for the funding or financing, of the qualified production
- Obtaining the creative rights to or the intellectual property for development or production of the qualified production.
- Hiring Above the Line personnel
- Supervising the overall production of the qualified production
- Arranging for the exhibition of the qualified production

## What is the process to apply for the Film and Digital Media Incentive?

An eligible production company can complete the application from the Michigan Film Office website at [www.michiganfilmoffice.org](http://www.michiganfilmoffice.org). The application **must** be accompanied by the following items:

- A detailed budget for the entire production, including non-Michigan expenditures.
- Recent financial statement of Applicant, or if Applicant is a newly formed entity, recent financial statement of Applicant's parent or controlling entity.
- Incentive Calculation Work Sheet.
- Details regarding how the production will be financed, including binding financing commitment such as loan agreement or commitment letter. The majority of funding must be secured before an application is submitted.
- List of Applicant's officers or principals and list of officers and principals of Applicant's parent or controlling entity, if applicable.
- Hires list, itemizing resident and non-resident hires separately.
- Details regarding how the eligible production will be marketed and distributed.
- Key Personnel Certification form and Key Personnel Questionnaire.
- Details regarding Applicant's background and record of completing productions.
- Script or storyboard.

The Michigan Film Office may ask for any additional information regarding the project as it deems necessary. Applications will not be reviewed until they are deemed complete. An applicant will be notified in writing when the application is complete. Once the application is complete, the Michigan Film Office has 21 days to issue a decision regarding the approval or denial of a project. If the project is approved, an agreement will be signed by the applicant. **Any expenditure made prior to the date of an approved agreement is not eligible for the incentive.**

## **The application fee is a .2% of the anticipated incentive (minimum \$200, maximum \$5,000). If the qualified production is not approved, will the application fee be refunded?**

Statutorily, each application must be accompanied by the application fee that is deposited into the Michigan Film Promotion Fund. However, if a project is not approved, a refund will be issued less a \$200 processing fee.

## **What are the criteria used when evaluating projects?**

All applications are reviewed by a Michigan Economic Development Corporation (MEDC) committee comprised of senior MEDC staff and the Michigan Film Commissioner.

Using the Public Act 291 of 2011 to guide approval decisions, preference is given to projects that best meet the following criteria:

- The production is financially viable.
- Utilization of existing infrastructure (studios, post-production facilities, equipment rental, etc.).
- The number and wage levels of direct jobs for Michigan residents created by a production.
- Ability to show Michigan in a positive light and promote the state as a tourist destination.
- Magnitude of estimated expenditures in Michigan.

Additionally, to be eligible to apply for funding under the Film and Digital Media Program, the eligible production company shall not be delinquent in a tax or other obligation owed to the state of Michigan or be owned or under the common control of an entity that is delinquent in a tax or other obligation owed to this state. In addition, an eligible production company shall not include

an entity that is more than 30% owned or controlled by an entity or individual in default of loans made or guaranteed by this state or any other state. Michigan income tax withholding is required for wages paid for work in the state and will be verified.

**Does an eligible production company need to register to do business in Michigan?**

Yes. Registration is required and an eligible production company will need to show proof of registration when submitting its post-production packet. Registration is a quick process that can be done online at <http://www.michigan.gov/business>.

The Film Office will not require that loan-outs register to do business in the state; however, they will be carefully reviewed during the audit process to ensure that all tax obligations have been met.

**When the eligible production is approved how long does it have to start the project?**

If an eligible production company enters into an agreement, material steps toward completing the production must take place within 90 days of the date of approval or the agreement shall expire.

The Michigan Film Office, for good cause, may extend this time for an additional 90 days, if the eligible production company submits the request in writing and the Michigan Film Office concurs. If the Michigan Film Office determines that material steps have not been taken, the eligible production company shall be notified in writing of a tentative decision to terminate an agreement on this basis, and shall have 14 calendar days to respond in writing, summarizing the material steps that have been taken toward completion of the qualified production. If the eligible production company fails to respond within 14 calendar days of receipt of the letter, then the eligible production company shall be notified in writing that the agreement has been terminated, and such termination shall be effective as of the date of such letter. An eligible production company whose agreement has been terminated shall not be prohibited from reapplying for film production incentive at any later date, for the same or a different qualified production.

**When may an eligible production company claim a film and digital media production refund?**

Eligible production companies must submit the form titled "Certificate of Completion Request" to the Michigan Film Office to obtain a signed certificate of completion after production is complete and an audit has been performed and certified by an independent Michigan Certified Public Accountant (CPA). The CPA must meet guidelines set forth in the audit requirements.

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>.

Once eligible production companies have submitted their applications for a certificate of completion, they should allow approximately 120 days for review of the application, assuming the application and required supporting documentation are complete and additional information is not required. Should additional information be required, the review may take longer.