

# MICHIGAN Infrastructure FAQs

## INFRASTRUCTURE CREDIT

### **When may an eligible production company claim a film infrastructure tax credit pursuant to section 457 of the Michigan Business Tax Act ("MBTA"). MCL 208.1457?**

In order to claim a film infrastructure tax credit, an eligible production company must submit an investment expenditure certificate signed by the Film Commissioner to the Department of Treasury, together with its Michigan Business Tax ("MBT") return for the applicable tax year. MCL 208.1457(7). The Michigan Film Office will issue an investment expenditure certificate signed by the Film Commissioner - the document that actually entitles the production company to a film infrastructure tax credit in a specified dollar amount - to an eligible taxpayer after a thorough review of that taxpayer's written request. Eligible taxpayers must submit form "MFO 005-2008" titled "Film Infrastructure Investment Expenditure Certificate" to the Michigan Film Office to obtain a signed investment expenditure certificate. Both the form and information on audit requirements are available at the Film Office web site at <http://www.michiganfilloffice.org/For-Producers/Incentives/Default.aspx>.

The Department of Treasury has determined that an eligible taxpayer must claim or assign a film infrastructure tax credit received pursuant to section 457 of the MBTA in the tax year in which the investment expenditure certificate, signed by the Film Commissioner, is issued by the Michigan Film Office. An eligible taxpayer 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.

Once eligible taxpayers have submitted their applications for an investment expenditure certificate, they should allow approximately 60 days for review of the application as provided in statute (MCL 208.1457(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 208.1457(5)).

### **If all or part of a film infrastructure credit is assigned, and the production facility that was the subject of the credit is later sold, triggering a recapture under the statute, which entity will be responsible for the recapture? The entity that was originally awarded the credit, or the assignee?**

The recipient of a film infrastructure credit may assign all or part of that credit to one or more assignees. MCL 208.1457(8). Certain subsequent events, including a sale of the production facility, may trigger a provision in the statute that effectively operates as a recapture of the credit. MCL 208.1457(3)(i). The Department has determined that any recapture of an assigned film infrastructure credit will be the responsibility of the assignor (the taxpayer that originally received the credit), and not the assignee(s).

**Do non-permanent fixtures such as honeywagons (a type of multi-room trailer used by film and television productions) and star trailers (larger trailers typically used by celebrities) qualify for the infrastructure credit?**

No, the credit is not available for mobile tangible assets, such as honeywagons and trailers that are designed to be moved from location to location.

**A company that is the lessee of a building in Michigan intends to make capital improvements to the leased property to convert it into studio space to be used by the film and/or video game production industries. Would the expenditures associated with these improvements qualify as the lessee's "base investment," making the lessee eligible for the Infrastructure Credit?**

No. The Infrastructure Credit is not available to lessees of real property, even though planned improvements to the real property may be capital in nature and would be depreciable by the lessee for federal income tax purposes. Only the owner of the real property is eligible to apply for the Infrastructure Credit with respect to improvements made to the real property.