

Michigan Film and Digital Media Incentive FAQs

1. What is the Michigan film and digital media Incentive?

The Film and Digital Media Production Assistance Program (MCL 125.2029h) is an Incentive program administered by the Michigan Film Office (MFO). It may provide a partial reimbursement of a production company's eligible expenditures paid for producing a film or digital media project in Michigan.

2. Who qualifies?

The film and digital media production Incentive ("Incentive") 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 a 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. To be eligible for this program, a production company must have a minimum of \$100,000 of Direct Production Expenditures and Michigan Personnel Expenditures.

3. What types of projects qualify?

The following 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 tease or a demo created primarily to stimulate the sale, marketing or promotion of future investment in a production.

4. What types of projects 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, or commercial.

5. What is the process to apply for the Incentive?

An eligible production company may complete the application which is available at the MFO website www.michiganfilmoffice.org. The application must be accompanied by the following items: (see application instructions for specifics)

- The application fee of 0.2% of the anticipated Incentive (minimum \$200, maximum \$5,000)
- Insurance Certificate, Binder or Quote for a minimum of \$1,000,000 general liability insurance.
- Script or storyboard

- Details regarding producers
- Hires list, itemizing resident hires (Michigan Hires List)
- Detailed budget for the entire production, including non-Michigan expenditures
- Incentive Calculation Work Sheet
- Description of marketing and distribution plans
- Details regarding how the production will be financed, including binding financing commitment such as a loan agreement, commitment letter, or investment letter. The majority of funding must be secured before an application is submitted. Production Company is required to provide a signed Power of Attorney Agreement/Proof of Funds for the MFO and the MEDC to independently verify the proof of funds.
- Recent financial statement of Applicant or, if Applicant is a newly formed entity, recent financial statement of Applicant's parent or controlling entity
- List of Applicant's officers or principals and list of officers and principals of Applicant's parent or controlling entity, if applicable
- Key Personnel Certification form
- Key Personnel Questionnaire for each person listed on the Key Personnel Certification form
- Any other attachments as requested by the MFO

If a project is approved, an agreement will be sent to the applicant for signature.

Any expenditure made prior to the effective date as designated by the MFO is not eligible for the Incentive.

6. 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 MCL 125.2029h(5), 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

To be eligible to apply for funding under the Incentive, 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. 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.

7. 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 Certificate of Completion Request (COCR) and audit materials. Registration may be done online at <http://www.michigan.gov/business>.

The MFO will not require that loan-out companies 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.

8. If the qualified production is not approved, will the application fee be refunded?

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.

9. When the eligible production is approved, how soon must the production start?

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

The MFO, for good cause, may extend this time for an additional 90 days, if the eligible production company submits the request in writing and the MFO concurs. If the MFO determines that material steps have not been taken to commence production, 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 the Incentive at any later date, for the same or a different qualified production.

10. What expenditures qualify?

- **Michigan Personnel Expenditures (MPE)** qualify for a 32% Incentive on eligible expenditures from 2012 to 2015. MPE mean expenditures made in this State for compensation to Michigan residents for both Above and Below the Line talent, management, and labor. Michigan Personnel must be residents of Michigan and must have a Michigan driver's license or State identification card. Production companies are required to complete a Michigan Residency Form for each Michigan resident. The 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 Incentive offered for MPE will be reduced to 27% beginning January 1, 2015.

Some limits apply. See FAQ #11 on Compensation Limits and FAQ #12 on Producer Compensation Limits below.

- **Crew Personnel Expenditures (CPE)** qualify for a 25% Incentive on eligible expenditures in 2012. CPE mean expenditures made in this state for compensation to non-resident Below the Line talent, management and labor, and Above the Line assistants and secretaries for services performed in Michigan. CPE will be reduced 5% annually until 2015. Some limits apply. See FAQ #11 on Compensation Limits below.
- **Qualified Personnel Expenditures (QPE)** qualify for a 27% Incentive on eligible expenditures from 2012 to 2015. QPE mean expenditures made in this state for compensation to non-resident Above the Line talent and management for services performed in Michigan. QPE will be reduced to 12% beginning January 1, 2015. Some limits apply. See FAQ #11 on Compensation Limits and FAQ #12 on Producer Compensation Limits below.
- **Direct Production Expenditures (DPE)** qualify for a 27% Incentive on eligible expenditures from 2012 to 2015. Direct Production Expenditures mean development, preproduction, production, or post-production expenditures attributable to a qualified production.
 - All qualified expenditures must be:
 - made in this state (see further details below)
 - from a Michigan vendor
 - directly attributable to the production of the qualified production
 - subject to taxation in Michigan
 - 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 purchased goods or services
 - a prize payable to participants in a game show
 - an expenditure for entertainment (except for wrap party expenditures), amusement, or recreation
 - an expenditure of more than \$2,500 for jewelry or artwork
 - parking tickets or other legal fines
 - donations
 - **“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.michiganfilmoffice.org for an eligible production company to use for vendors who may need to obtain equipment from out of state

Please refer to the ***Schedule of Eligible Expenditures*** for additional information.

11. Are there any limits on compensation payments?

Yes. Payments or compensation for any one employee that exceed \$2,000,000 (including fringes and taxable portions of per diems, allowances, etc.) are not eligible for the Incentive.

12. Are there any special limits or requirements related to producers of a qualified production?

Yes. Eligible payments, compensation, and related fringes to all producers (combined) of a qualified production **who reside in the State** are subject to 10% of DPE plus MPE.

Eligible payments, compensation, and related fringes to all producers (combined) of a qualified production **who do not reside in the State** are subject to 5% of DPE plus MPE.

Producer services must be rendered in this state.

A “producer” means an individual without regard to his or her actual title or screen credit is 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

Line Producers and Unit Production Managers (UPMs) are generally considered Below the Line (BTL) for purposes of the Incentive.

13. May I pay my crew as independent contractors?

Crew should be classified as employees rather than independent contractors. IRS Guidelines state “an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done”. The production company-crew relationship typically exhibits most of the criteria from the IRS 20 Factor Test as set forth in IRS Revenue Ruling 87-41, 1987-1 C.B. 296 (20 Factor Test) that indicate crew are employees rather than independent contractors:

- “Instructions” - the company has the right to dictate when where and how the work is to be performed
- “Integration” - workers’ services are highly integrated into operations
- “Services rendered personally” - work is performed by a specific person
- “Hiring, supervising, and paying assistants” - the production company hires and pays a worker’s assistants
- “Set hours of work” – hours or days of work are dictated by the company
- “Full time required” – worker is required to substantially devote full time on the day(s) employed
- “Doing work on employer’s premises” – ability to require the employee to work on company premises
- “Order or sequence set” – the company has the right to require work to be performed in a particular order or sequence
- “Payment by hour, week, month”
- “Payment of business and/or traveling expenses” – direct reimbursement of travel or other business expenses
- “Furnishing of tools and materials” – usage of company provided tools or supplies (rented items, including “box” or “kit” rentals are company provided)
- “Significant investment” – company provides the workplace
- “Right to discharge”
- “Right to terminate” – worker has the right to terminate relationship at any time without incurring liability

Further, crew typically do not exhibit the following criteria from the 20 Factor Test that might indicate independent contractor status:

- “Realization of profit or loss” – a worker who can realize a profit **or loss**
- “Working for more than one firm at a time” – worker performs more than de minimis services for a multiple of unrelated persons or firms concurrently

Loan-out companies are not considered “employees”, however the loan-out company must be a bona fide company as evidenced by appropriate filings with the appropriate state or country of origin, and all loaned-out individuals must have social security numbers.

14. What are the Michigan Income Tax Withholding requirements?

Michigan Income Tax must be withheld and paid on all employees **and loan-out companies**. The Michigan Income Tax rate is 4.35%. No Incentive will be paid unless these withholding obligations have been met.

15. Are per diem payments eligible for the Incentive?

Only the portion of these payments that is considered taxable for federal purposes and is reported on the employee’s W-2 as taxable income will be eligible for the Incentive. This taxable excess is classified the same as that individual’s compensation (MPE, QPE, or CPE). The nontaxable portion of these payments is not eligible for the Incentive.

16. Are box rentals and similar allowances eligible?

Yes. Box rentals, kit rentals, housing, car, phone, and other such allowances will be eligible for the Incentive if such amounts are included in the employee’s taxable income as reported on their W-2.

If not reported as part of compensation on their W-2, these expenditures must be reported on a 1099 and will be eligible **only** if the employee is a Michigan resident.

It is not necessary for the employee to charge the production company sales tax on the box rental fee. It makes no difference for Incentive 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.

17. Are insurance and bonding eligible?

Yes. Insurance coverage or bonding will be eligible as DPE 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. Relevant supporting records must be made available to auditors as requested.

18. Is travel eligible?

Yes. Commercial airfare and other travel **to or within** the Michigan is eligible if purchased through a Michigan travel agency and is directly attributable to a qualified production. Return trips are not eligible. 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.

19. Are finance fees an eligible expenditure?

Yes. The interest and finance fees associated with a production loan will generally be eligible as DPE for the Incentive if:

- expense otherwise satisfies the requirements of a DPE
- lender is physically located in Michigan
- all loan services are performed in Michigan
- lender must be a non-interested commercial lender, that is, a public, private or institutional entity whose principal business activity is lending money to individuals and businesses
- lender is not related to or affiliated with the production company or any production crew or cast member
- production financing must be a bona fide loan, payable by the production company
- loan proceeds must be spent in Michigan
- loan is 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 (GAAP).

See the *Notice on Eligible Interest* in the Certificate of Completion Request Packet for further information.

20. Are payments to production services companies eligible?

Yes. A “production services company” means an entity which 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 eligible as DPE, 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.

To be eligible as DPE, the underlying expenditures incurred by the production services company must meet the requirements of DPE as discussed above and be available for audit by the independent auditor, the MFO, and the MEDC.

21. Is there an additional Incentive for utilizing Michigan infrastructure?

Yes. An eligible production can obtain an additional 3% Incentive on MPE and DPE for a production “produced at” at a Qualified Facility or Post-production Facility.

A **Qualified Facility (QF)** 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
- must 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 Post-production Facility (PPF) 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
- must 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

The proportion of time (as stated in days) the production is using a QF or PPF while the production is in Michigan will be used to determine the percentage of MPE and DPE that will receive the additional 3%.

$$\frac{\text{\# of days in QF or PPF}}{\text{\# of days in Michigan}} = \text{Percentage of MPE + DPE eligible for additional 3\%}$$

Recordkeeping to support the days utilized will be required and closely reviewed during the audit process.

If a qualified production does not use a QF or PPF or have its primary production offices at a QF or PPF, it will not be eligible for the additional 3%. Mere use of a vendor at a QF or PPF does not qualify the production for the additional 3% Incentive.

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

Eligible production companies must submit the form "Certificate of Completion Request" (COCR) to the MFO after all Michigan production is complete and an audit has been performed and certified by an independent Michigan Certified Public Accountant (CPA) meeting the guidelines described in FAQ #23. Only one COCR may be submitted per project. The COCR template is available at the MFO web site.

There are supplemental documents required to be submitted to the MFO with the audit. Please refer to the Audit Packet for additional information.

23. What are the requirements for selecting an independent auditor?

Each production is required to have and submit an audit by an independent CPA. CPA firms and auditors must meet these conditions:

- Michigan-based
- Licensed in the State of Michigan
- Show proof of AICPA Peer Review Board review that has been accepted by the MACPA Peer Review Task Force for the licensing period beginning January 1, 2012
- Must have prior experience auditing film productions

- Must follow GAAP or OCBOA
- Must perform audits on a routine and current basis
- Must provide independent certification on risk assessment and internal controls related to compliance
- In order to insure independence, the audit fee must be paid prior to submission of the COCR

24. How long does it take to get the Incentive?

Assuming the COCR and required supporting documentation are complete and additional information is not required, the eligible production company should allow approximately 120 days. If additional information is requested during the COCR review, the process may take longer. The Incentive will be paid via EFT to the applicant production company of record.