
A BILL FOR AN ACT

RELATING TO PERFORMING ARTS BUSINESSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that Hawaii's fledgling
2 film, television, and digital media industry holds much promise
3 for the economic and cultural future of the State. It is a
4 crucial point for the industry, as the industry is currently on
5 the verge of growing immensely and further investments would
6 allow it to flourish. Without the State's support, the industry
7 and its workforce will remain in limbo and continue to have an
8 uncertain future. The legislature finds that the State, as many
9 other states and countries have done in recent years, can play a
10 vital role in stimulating the growth of this potential film and
11 digital media industry, allowing it to become a self-sustaining
12 and dependable provider of steady, highly skilled, highly paid,
13 twenty-first-century jobs for Hawaii's residents.

14 The purpose of this Act is to stimulate the performing arts
15 businesses in the State by creating a program that allows the
16 State to purchase high technology business investment tax
17 credits from performing arts qualified high technology
18 businesses at a discount. Such a program would limit the



1 exposure of state funds with respect to certain performing arts
2 qualified high technology businesses, while at the same time
3 enhancing the economic benefits the credits were designed to
4 bring.

5 While performing arts qualified high technology businesses
6 would still have the option of raising investment and maximizing
7 credit claims, the option to transfer credits back to the State
8 is an attractive alternative because it is direct, guaranteed,
9 hassle-free, and a better deal for the qualified high technology
10 businesses and the State.

11 Currently, only about ten to fifteen per cent of investment
12 dollars are going back to the performing arts qualified high
13 technology businesses in the form of investment tax credits,
14 with the majority of the credits going to investors. A state
15 buy-back program ensures that credits go back to the performing
16 arts qualified high technology businesses they were meant to
17 stimulate, thereby directly benefiting them. By redirecting the
18 way credits are issued, the State can reap higher economic
19 benefits (stimulating more productions) at likely lower costs.

20 The program would also help to redirect a higher percentage
21 of local investment dollars toward smaller, independent
22 performing arts qualified high technology businesses and other

1 types of qualified high technology businesses whose ability to
2 remain in business relies greatly on investment dollars
3 stimulated by the credit.

4 This Act also establishes a mechanism to appropriate a
5 percentage of the revenue generated as the result of the buy-
6 back program to the Hawaii television and film development
7 special fund, for the purpose of directly funding local projects
8 that further the development of the local film and television
9 industry.

10 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 **"§235- Transferability of the high technology business**
14 **investment tax credit.** (a) Any taxpayer entitled to a tax
15 credit under section 235-110.9 based upon an investment in a
16 performing arts qualified high technology business may elect to
17 treat the credit as earned by the performing arts qualified high
18 technology business. The election shall be made for all of the
19 credit earned over the five-year period provided in section
20 235-110.9. The election shall be filed with the tax return for
21 the performing arts qualified high technology business and the

1 taxpayer's tax return for the taxable year in which the taxpayer
2 made the investment.

3 (b) Any performing arts qualified high technology business
4 for which an election under subsection (a) has been made may
5 transfer the tax credit provided in section 235-110.9 to the
6 department for twenty per cent of the face value of the credit
7 earned and paid over five years pursuant to the pay-out schedule
8 established in section 235-110.9; provided that the maximum
9 allowed credits per taxpayer set forth by section 235-110.9
10 shall not apply to credits transferred pursuant to this section.

11 (c) To qualify to transfer the tax credit to the
12 department as provided in subsection (b):

13 (1) All taxpayers who have made an investment in the
14 performing arts qualified high technology business
15 during the taxable year of the qualified high
16 technology business shall elect to treat the credit as
17 earned by the performing arts qualified high
18 technology business; and

19 (2) The performing arts qualified high technology business
20 shall transfer all of the credit that it is treated as
21 having earned to the department.

1 (d) Any performing arts qualified high technology business
 2 or related entity that has transferred any credit to the
 3 department pursuant to subsection (b) in any taxable year shall
 4 also sell or waive the motion picture and film production income
 5 tax credit set forth in section 235-17 and the capital goods
 6 excise tax credit set forth in section 235-110.7 in that same
 7 taxable year in the manner provided in subsection (b).

8 (e) Prior to making an election under subsection (a), the
 9 performing arts qualified high technology business shall apply
 10 to the director of taxation for approval of the election and
 11 shall provide:

12 (1) The total amount of qualified research costs per
 13 project per taxable year; and

14 (2) The number of hires versus the number of local hires
 15 by category, such as department, and by county, per
 16 project, per taxable year.

17 The director of taxation shall approve all qualifying elections
 18 to transfer credits under this section in the order that the
 19 requests for approval are received by the director of taxation;
 20 provided that the director of taxation shall only approve
 21 qualifying elections to transfer credits under this section for
 22 the first \$25,000,000 in the aggregate paid to all performing



1 arts qualified high technology businesses making elections under
2 this section in any year. In any year in which the department
3 of taxation approves the transfer of less than \$25,000,000 in
4 the aggregate to all performing arts qualified high technology
5 businesses, the excess revenue may be carried over and applied
6 to subsequent years.

7 (f) This section shall not apply to any investments that:

8 (1) Are part of a transaction or series of transactions;

9 or

10 (2) Structured to avoid the purposes of this section so
11 that a production could use both this section and
12 section 235-110.7, 235-110.9, or 235-17.

13 (g) On or before March 31 of each year, the department
14 shall submit a report to the legislature on all tax credits
15 under this section transferred for the previous taxable year and
16 the total dollar amount of the revenue generated as a result of
17 all credits transferred for the previous taxable year.

18 Beginning January 1, 2007, and annually thereafter, the
19 legislature shall appropriate to the Hawaii television and film
20 development special fund, pursuant to section 201-113,
21 per cent of the total amount of the revenue generated as a
22 result of the credits transferred for the previous taxable year.



1 (h) For the purposes of this section:

2 "Aggregate qualified investments" means qualified
3 investments earned over the five-year period in section
4 235-110.9.

5 "Performing arts products" means the same as defined in
6 section 235-7.3.

7 "Performing arts qualified high technology business" means
8 a qualified high technology business whose "qualified research"
9 consists solely of "performing arts products."

10 "Qualified high technology business" means the same as
11 defined in section 235-110.9.

12 "Qualified investment" means investments that qualify for
13 tax credits under section 235-110.9.

14 "Qualified research" means the same as defined in section
15 235-7.3."

16 SECTION 3. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2006.

Report Title:

Taxes; Investment Tax Credits

Description:

Establishes a program which allows the state to buy back tax credits from qualified high technology businesses (QHTB) at 20% of the face value of the credits distributed over 5 years. Appropriates a percentage of the revenue generated from the buy-back program to the Hawaii television and film development special fund. (SD1)

