
A BILL FOR AN ACT

RELATING TO DIGITAL MEDIA.

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

1 SECTION 1. The legislature finds that the film industry in
2 Hawaii is an important component of a diversified economy whose
3 financial impact can be strengthened significantly if existing
4 incentives are adjusted.

5 The film industry has generated approximately \$160,000,000
6 in tax revenues for Hawaii since 1992. The State has long
7 recognized the benefits of a film industry and the dynamic
8 synergy it brings to our top industry, tourism. The legislature
9 has supported the growth of the film industry by developing the
10 Hawaii film studio, establishing a film school at the University
11 of Hawaii, streamlining the permitting process, and offering
12 other incentives to attract film and television productions to
13 the State.

14 The legislature also finds that there has been a dramatic
15 increase in the number of state and local governments attempting
16 to attract film productions. Those jurisdictions have
17 experienced dramatic increases in in-state spending and
18 significant growth in workforce and infrastructure development.



1 In New Mexico, production spending increased by \$162,000,000
2 since the incentive legislation passed in 2002. Louisiana saw
3 cumulative film expenditures rise to \$800,000,000, since its
4 legislation passed in 2002. New York City enjoyed an increase
5 of \$600,000,000 in new production and the creation of six
6 thousand new jobs since the state and city passed the "Made in
7 NY" fifteen per cent incentive package in August 2004 and
8 January 2005, respectively. More productions in Hawaii would
9 stimulate more direct and indirect tax revenue. According to
10 the department of business, economic development, and tourism,
11 the film industry averages \$100,000,000 in direct spending
12 annually, which generates \$13,000,000 in direct and indirect tax
13 revenues. If annual production expenditures could be tripled,
14 the State would stand to gain more than \$39,000,000 in tax
15 revenues.

16 The legislature further finds that it is desirable to
17 provide tools to the film industry to encourage similar dramatic
18 growth in Hawaii because the film industry:

19 (1) Infuses significant amounts of new money into the
20 economy, which is dispersed across many communities
21 and businesses and which benefits a wide array of
22 residents;



- 1 (2) Creates skilled, high-paying jobs;
- 2 (3) Has a natural dynamic synergy with Hawaii's top
3 industry, tourism, and is used as a destination
4 marketing tool for the visitor industry; and
- 5 (4) Is a clean, nonpolluting industry that values the
6 natural beauty of Hawaii and its diverse multicultural
7 population and array of architecture.

8 The legislature also finds that the industry has a strong
9 desire to hire locally and invests in training and workforce
10 development of island-based personnel. The three television
11 series and one independent feature film that filmed in Hawaii in
12 2004 (North Shore, Hawaii, LOST, and Tides of War) had crews
13 consisting of eighty-five to ninety per cent Hawaii residents.
14 It is the intent of this Act to continue to encourage this
15 industry practice of hiring a significant number of residents
16 and to support training and educational initiatives and
17 opportunities.

18 The legislature finds that series cancellations in recent
19 years were due, in part, to the absence of cost-effective
20 incentives that take into account the front-end budgeting
21 methods normally used by the film industry and that allow for
22 lower production costs. If this issue was addressed, a greater



1 number of significant projects would be attracted to the islands
2 and help build our local film industry infrastructure.

3 Therefore, it is the intent of the legislature to encourage
4 the growth of the film industry by providing incentives that
5 attract more film and television productions to Hawaii and that
6 whereby generate tax revenues, provide jobs and income for
7 residents, support tourism and the natural beauty of Hawaii, and
8 enable the State to compete effectively against other
9 jurisdictions that offer similar incentives.

10 SECTION 2. Section 235-17, Hawaii Revised Statutes, is
11 amended to read as follows:

12 **"§235-17 Motion picture, digital media, and film**
13 **production[~~+~~] income tax credit.** (a) ~~[There]~~ Any law to the
14 contrary notwithstanding, there shall be allowed to each
15 taxpayer subject to the taxes imposed by this chapter, an income
16 tax credit which shall be deductible from the taxpayer's net
17 income tax liability, if any, imposed by this chapter for the
18 taxable year in which the credit is properly claimed. The
19 amount of the credit shall be ~~[up to four]~~ fifteen per cent of
20 the qualified production costs incurred by a qualified
21 production in any county of the State ~~[in the production of~~
22 ~~motion picture or television films.~~ The director of taxation



1 ~~shall specify by rule a schedule of allowable tax credits based~~
2 ~~on the principle that greater tax credits shall be allowed for~~
3 ~~greater benefits to the state economy.]~~ with a population of
4 over seven hundred thousand; or twenty per cent of the qualified
5 production costs incurred by a qualified production in any
6 county of the state with a population of seven hundred thousand
7 or less. A qualified production occurring in more than one
8 county may prorate its expenditures based on the amounts spent
9 in each county, if the population bases differ enough to change
10 the percentage of tax credit.

11 In the case of a partnership, S corporation, estate, or
12 trust, the tax credit allowable is for qualified production
13 costs incurred by the entity for the taxable year. The cost
14 upon which the tax credit is computed shall be determined at the
15 entity level. Distribution and share of credit shall be
16 determined by rule.

17 If a deduction is taken under section 179 (with respect to
18 election to expense depreciable business assets) of the Internal
19 Revenue Code of 1986, as amended, no tax credit shall be allowed
20 for those costs for which the deduction is taken.



1 The basis for eligible property for depreciation of
2 accelerated cost recovery system purposes for state income taxes
3 shall be reduced by the amount of credit allowable and claimed.

4 ~~[(b) There shall be allowed to each taxpayer subject to~~
5 ~~the taxes imposed by this chapter, an income tax credit which~~
6 ~~shall be deductible from the taxpayer's net income tax~~
7 ~~liability, if any, imposed by this chapter for the taxable year~~
8 ~~in which the credit is properly claimed. The amount of the~~
9 ~~credit shall be up to 7.25 per cent effective January 1, 1999,~~
10 ~~of the costs incurred in the State in the production of motion~~
11 ~~picture or television films for actual expenditures for~~
12 ~~transient accommodations. The director of taxation shall specify~~
13 ~~by rule a schedule of allowable tax credits based on the~~
14 ~~principle that greater tax credits shall be allowed for greater~~
15 ~~benefits to the state economy.~~

16 ~~In the case of a partnership, S corporation, estate, or~~
17 ~~trust, the tax credit allowable is for production costs incurred~~
18 ~~by the entity for the taxable year. The cost upon which the tax~~
19 ~~credit is computed shall be determined at the entity level.~~

20 ~~(e)]~~ (b) The credit allowed under this section shall be
21 claimed against the net income tax liability for the taxable
22 year. For the purpose of this section, "net income tax



1 liability" means net income tax liability reduced by all other
2 credits allowed under this chapter.

3 ~~(d)~~ (c) If the tax credit under this section exceeds the
4 taxpayer's income tax liability, the excess of credits over
5 liability shall be refunded to the taxpayer; provided that no
6 refunds or payment on account of the tax credits allowed by this
7 section shall be made for amounts less than \$1. All claims,
8 including any amended claims, for tax credits under this section
9 shall be filed on or before the end of the twelfth month
10 following the close of the taxable year for which the credit may
11 be claimed. Failure to comply with the foregoing provision
12 shall constitute a waiver of the right to claim the credit.

13 (d) To qualify for this tax credit, a production shall:

14 (1) Meet the definition of a qualified production
15 specified in subsection (1);

16 (2) Have qualified production costs totaling at least
17 \$200,000;

18 (3) Provide the State, at a minimum, a shared-card, end-
19 title screen credit;

20 (4) Provide evidence of reasonable efforts to hire local
21 talent and crew; and



1 (5) Provide evidence of financial or in-kind contributions
2 or educational or workforce development efforts, in
3 partnership with related local industry labor
4 organizations, educational institutions, or both,
5 toward the furtherance of the local film and
6 television and digital media industries.

7 (e) In a given tax year, no qualified production cost that
8 has been financed by investments for which a credit was claimed
9 by any taxpayer pursuant to section 235-110.9 is eligible for
10 credits under this section.

11 (f) To receive the tax credit, the taxpayer shall first
12 prequalify the production for the credit by registering with the
13 Hawaii film office during the development or preproduction
14 stage. Failure to comply with this provision may constitute a
15 waiver of the right to claim the credit.

16 ~~[(e)]~~ (g) The director of taxation shall prepare forms as
17 may be necessary to claim a credit under this section. The
18 director may also require the taxpayer to furnish information to
19 ascertain the validity of the claim for credit made under this
20 section and may adopt rules necessary to effectuate the purposes
21 of this section pursuant to chapter 91.



1 (h) Every taxpayer claiming a tax credit under this
2 section for a qualified production, no later than ninety days
3 following the end of each taxable year in which qualified
4 production costs were expended, shall submit a written, sworn
5 statement to the department of business, economic development,
6 and tourism, identifying:

7 (1) All qualified production costs as provided by
8 subsection (a), if any, incurred in the previous
9 taxable year;

10 (2) The amount of tax credits claimed pursuant to this
11 section, if any, in the previous taxable year; and

12 (3) The number of total hires versus the number of local
13 hires by category (i.e., department) and by county.

14 (i) The department of business, economic development, and
15 tourism shall:

16 (1) Maintain records of the names of the taxpayers and
17 qualified productions thereof claiming the tax credits
18 under subsection (a);

19 (2) Obtain and sum the aggregate amounts of all qualified
20 production costs per qualified production and per
21 qualified production per taxable year; and



1 (3) Provide a letter to the director of taxation
2 specifying the amount of the tax credit per qualified
3 production for each taxable year and the cumulative
4 amount of the tax credit for all years claimed.

5 Upon each determination, the department of business,
6 economic development, and tourism shall issue a letter to the
7 taxpayer for the qualified production specifying the qualified
8 production costs, and the tax credit amount qualified for each
9 taxable year. The taxpayer for the qualified production shall
10 file the letter with the taxpayers tax return for the qualified
11 production to the department of taxation. Notwithstanding the
12 authority of the department of business, economic development,
13 and tourism under this section, the director of taxation may
14 audit and adjust the tax credit amount to conform to the facts.

15 (j) Total tax credits claimed per qualified production
16 shall not exceed \$8,000,000.

17 (k) Qualified productions shall comply with subsections
18 (d), (e), (f), and (h).

19 (l) For the purposes of this section:

20 "Commercial":



- 1 (1) Means an advertising message that is filmed using
2 film, videotape, or digital media, for dissemination
3 via television broadcast or theatrical distribution;
4 (2) Includes a series of advertising messages if all parts
5 are produced at the same time over the course of six
6 consecutive weeks; and
7 (3) Does not include an advertising message with Internet-
8 only distribution.

9 "Digital media" means production methods and platforms
10 directly related to the creation of cinematic imagery and
11 content, specifically using digital means, including but not
12 limited to digital cameras, digital sound equipment, and
13 computers, to be delivered via film, videotape, interactive game
14 platform, or other digital distribution media (excluding
15 Internet-only distribution).

16 "Post production" means production activities and services
17 conducted after principal photography is completed, including
18 but not limited to editing, film and video transfers,
19 duplication, transcoding, dubbing, subtitling, credits, close
20 captioning, audio production, special effects (visual and
21 sound), graphics, and animation.



1 "Production" means a series of activities that are directly
2 related to the creation of visual and cinematic imagery to be
3 delivered via film, videotape, or digital media, and to be sold,
4 distributed, or displayed as entertainment or advertisement
5 products for mass public consumption, including but not limited
6 to scripting, casting, set design and construction,
7 transportation, videography, photography, sound recording,
8 interactive game design, and post production.

9 "Qualified production":

10 (1) Means a production, with expenditures in the State,
11 for the total or partial production of a feature-
12 length motion picture, short film, made-for-television
13 movie, commercial, music video, interactive game,
14 television series pilot, single season (up to twenty-
15 two episodes) of a television series regularly filmed
16 in the State (if number of episodes per single season
17 exceeds twenty-two, additional episodes for the same
18 season shall constitute a separate qualified
19 production), television special, single television
20 episode that is not part of a television series
21 regularly filmed or based in the State, national
22 magazine show, or national talk show. For the



1 purposes of subsections (d) and (j), each of the
2 aforementioned qualified production categories shall
3 constitute separate, individual qualified productions;

4 (2) Does not include: daily news; public affairs
5 programs; non-national magazine or talk shows;
6 televised sporting events or activities; productions
7 that solicit funds; productions produced primarily for
8 industrial, corporate, institutional, or other private
9 purposes; and productions that include any material or
10 performance prohibited by chapter 712.

11 "Qualified production costs" means the costs incurred by a
12 qualified production within the State that are subject to State
13 of Hawaii general excise tax or income tax and that have not
14 been financed by any investments for which a credit was or will
15 be claimed pursuant to section 235-110.9. Qualified production
16 costs include but are not limited to:

17 (1) Costs incurred during preproduction such as location
18 scouting and related services;

19 (2) Costs of set construction and operations, purchases or
20 rentals of wardrobe, props, accessories, food, office
21 supplies, transportation, equipment, and related
22 services;



- 1 (3) Wages or salaries of cast, crew, and musicians;
- 2 (4) Costs of photography, sound synchronization, lighting,
- 3 and related services;
- 4 (5) Costs of editing, visual effects, music, other post-
- 5 production, and related services;
- 6 (6) Rentals and fees for use of local facilities and
- 7 locations;
- 8 (7) Rentals of vehicles and lodging for cast and crew;
- 9 (8) Airfare for flights to or from Hawaii, and interisland
- 10 flights;
- 11 (9) Insurance and bonding;
- 12 (10) Shipping of equipment and supplies to or from Hawaii,
- 13 and interisland shipments; and
- 14 (11) Other direct production costs specified by the
- 15 department in consultation with the department of
- 16 business, economic development, and tourism."

17 SECTION 3. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 4. This Act shall take effect on July 1, 2006;
20 provided that:



H.B. NO. 3080

- 1 (1) Section 2 of this Act shall apply to qualified
- 2 production costs incurred after July 1, 2006, and
- 3 before January 1, 2016; and
- 4 (2) This Act shall be repealed on January 1, 2016, and
- 5 section 235-17, Hawaii Revised Statutes, shall be
- 6 reenacted in the form in which it read on the day
- 7 before the effective date of this Act.

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INTRODUCED BY:

John R. Kuanata
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Perrie P. Abramsay, Jr.

JAN 25 2006



Report Title:

Digital Media; Tax Credit

Description:

Temporarily replaces the motion picture and film production tax credit with the motion picture, digital media, and film production tax credit which provides an income tax credit amounting to 15% of qualified production costs incurred, in any county of Hawaii with a population over 700,000, and 20% in any county of Hawaii with a population under 700,000; establishes criteria to qualify for the tax credit; caps credit at \$8,000,000 per production.

