

JAN 24 2007

A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 **"PART .**

5 **MOTION PICTURE, DIGITAL MEDIA, AND FILM PRODUCTION**

6 **§235-A Performing arts royalties derived from patents,**
7 **copyrights, or trade secrets excluded from gross income. (a)**

8 In addition to the exclusions in section 235-7, there shall be
9 excluded from gross income, adjusted gross income, and taxable
10 income, amounts received by an individual or a qualified
11 business as royalties and other income derived from any patents,
12 copyrights, and trade secrets:

13 (1) Owned by the individual or qualified business; and

14 (2) Developed and arising out of a qualified business.

15 (b) This exclusion shall extend to:

16 (1) The authors of performing arts products, or any parts
17 thereof, without regard to the application of the



1 work-for-hire doctrine under United States copyright
2 law;

3 (2) The authors of performing arts products, or any parts
4 thereof, under the work-for-hire doctrine under United
5 States copyright law; and

6 (3) The assignors, licensors, and licensees of any
7 copyright rights in performing arts products, or any
8 parts thereof.

9 (c) For the purposes of this section:

10 "Performing arts products" means:

11 (1) Audio files, video files, audiovideo files, computer
12 animation, and other entertainment products perceived
13 by or through the operation of a computer; and

14 (2) Commercial television and film products for sale or
15 license, and reuse or residual fee payments from these
16 products.

17 "Qualified business" means a business engaged in producing
18 performing arts products that conducts more than fifty per cent
19 of its activities in qualified research.

20 "Qualified research" means:

21 (1) The same as in section 41(d) of the Internal Revenue
22 Code; and



1 (2) Performing arts products.

2 **§235-B Performing arts investment tax credit.** (a) There
3 shall be allowed to each taxpayer subject to the taxes imposed
4 by this chapter a performing arts investment tax credit that
5 shall be deductible from the taxpayer's net income tax
6 liability, if any, imposed by this chapter for the taxable year
7 in which the investment was made and the following four years
8 provided the credit is properly claimed. The tax credit shall
9 be as follows:

10 (1) In the year the investment was made, thirty-five per
11 cent;

12 (2) In the first year following the year in which the
13 investment was made, twenty-five per cent;

14 (3) In the second year following the investment, twenty
15 per cent;

16 (4) In the third year following the investment, ten per
17 cent; and

18 (5) In the fourth year following the investment, ten per
19 cent;

20 of the investment made by the taxpayer in each qualified
21 business, up to a maximum allowed credit in the year the
22 investment was made, \$700,000; in the first year following the



1 year in which the investment was made, \$500,000; in the second
2 year following the year in which the investment was made,
3 \$400,000; in the third year following the year in which the
4 investment was made, \$200,000; and in the fourth year following
5 the year in which the investment was made, \$200,000.

6 (b) The credit allowed under this section shall be claimed
7 against the net income tax liability for the taxable year. For
8 the purpose of this section, "net income tax liability" means
9 net income tax liability reduced by all other credits allowed
10 under this chapter.

11 (c) If the tax credit under this section exceeds the
12 taxpayer's income tax liability for any of the five years that
13 the credit is taken, the excess of the tax credit over liability
14 may be used as a credit against the taxpayer's income tax
15 liability in subsequent years until exhausted. Every claim,
16 including amended claims, for a tax credit under this section
17 shall be filed on or before the end of the twelfth month
18 following the close of the taxable year for which the credit may
19 be claimed. Failure to comply with the foregoing provision
20 shall constitute a waiver of the right to claim the credit.

21 (d) If at the close of any taxable year in the five-year
22 period in subsection (a):



- 1 (1) The business no longer qualifies as a qualified
2 business;
- 3 (2) The business or an interest in the business has been
4 sold by the taxpayer investing in the qualified
5 business; or
- 6 (3) The taxpayer has withdrawn the taxpayer's investment
7 wholly or partially from the qualified business;
- 8 the credit claimed under this section shall be recaptured. The
9 recapture shall be equal to ten per cent of the amount of the
10 total tax credit claimed under this section in the preceding two
11 taxable years. The amount of the credit recaptured shall apply
12 only to the investment in the particular qualified business that
13 meets the requirements of paragraph (1), (2), or (3). The
14 recapture provisions of this subsection shall not apply to a tax
15 credit claimed for a qualified business that does not fall
16 within the provisions of paragraph (1), (2), or (3). The amount
17 of the recaptured tax credit determined under this subsection
18 shall be added to the taxpayer's tax liability for the taxable
19 year in which the recapture occurs under this subsection.
- 20 (e) Every taxpayer, before March 31 of each year in which
21 an investment in a qualified business was made in the previous



1 taxable year, shall submit a written, certified statement to the
2 director of taxation identifying:

- 3 (1) Qualified investments, if any, expended in the
4 previous taxable year;
- 5 (2) The amount of tax credits claimed pursuant to this
6 section, if any, in the previous taxable year; and
- 7 (3) The number of total hires versus the number of local
8 hires by category (i.e., department) and by country.

9 The department of taxation shall use the information from the
10 statements submitted each year under this subsection to prepare
11 a report published by April 1 of each year presenting the
12 information received under this subsection. The information
13 shall be presented in the aggregate and shall be available to
14 the public.

15 (f) The department shall:

- 16 (1) Maintain records of the names and addresses of the
17 taxpayers claiming the credits under this section and
18 the total amount of the qualified investment costs
19 upon which the tax credit is based;
- 20 (2) Verify the nature and amount of the qualifying
21 investments;



1 (3) Total all qualifying and cumulative investments that
2 the department certifies; and

3 (4) Certify the amount of the tax credit for each taxable
4 year and cumulative amount of the tax credit.

5 Upon each determination made under this subsection, the
6 department shall issue a certificate to the taxpayer verifying
7 information submitted to the department, including qualifying
8 investment amounts, the credit amount certified for each taxable
9 year, and the cumulative amount of the tax credit during the
10 credit period. The taxpayer shall file the certificate with the
11 taxpayer's tax return with the department.

12 The director of taxation may assess and collect a fee to
13 offset the costs of certifying tax credits claims under this
14 section. All fees collected under this section shall be
15 deposited into the tax administration special fund established
16 under section 235-20.5.

17 (g) As used in this section:

18 "Investment tax credit allocation ratio" means, with
19 respect to a taxpayer that has made an investment in a qualified
20 business, the ratio of:

21 (1) The amount of the credit under this section that is,
22 or is to be, received by or allocated to the taxpayer



1 over the life of the investment, as a result of the
2 investment; to

3 (2) The amount of the investment in the qualified
4 business.

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

7 "Qualified business" means a business engaged in producing
8 performing arts products, employing or owning capital or
9 property, or maintaining an office, in this State; provided
10 that:

11 (1) More than fifty per cent of its total business
12 activities are qualified research; and provided
13 further that the business conducts more than seventy-
14 five per cent of its qualified research in this State;
15 or

16 (2) More than seventy-five per cent of its gross income is
17 derived from qualified research; and provided further
18 that this income is received from:

19 (A) Products sold from, manufactured in, or produced
20 State; or

21 (B) Services performed in this State.



1 "Qualified research" means the same as defined in section
2 235-A.

3 (h) Common law principles, including the doctrine of
4 economic substance and business purpose, shall apply to any
5 investment. There exists a presumption that a transaction
6 satisfies the doctrine of economic substance and business
7 purpose to the extent that the special allocation of the
8 production arts tax credit has an investment tax credit ratio of
9 1.5 or less of credit for every dollar invested.

10 Transactions for which an investment tax credit allocation
11 ratio greater than 1.5 but not more than 2.0 of credit for every
12 dollar invested and claimed may be reviewed by the department
13 for applicable doctrines of economic substance and business
14 purpose.

15 Businesses claiming a tax credit for transactions with
16 investment tax credit allocation ratios greater than 2.0 of
17 credit for every dollar invested shall substantiate economic
18 merit and business purpose consistent with this section.

19 (i) Persons eligible for a tax credit under section 235-D
20 may claim a tax credit under this section but not under section
21 235-110.9. Persons not eligible for a tax credit under 235-D



1 shall not claim any tax credit under this section. Any person
2 that has:

3 (1) Claimed the tax credit under section 235-110.9; and

4 (2) Not exhausted the right to claim the tax credit for
5 the five-year period provided thereunder,

6 shall be eligible to continue to claim the tax credit, without
7 reduction or requalification, for the remainder of the five-year
8 period pursuant to this section.

9 (j) This section shall not apply to taxable years
10 beginning after December 31, 2010.

11 **§235-C Tax credit for performing arts research activities.**

12 (a) Section 41 (with respect to the credit for increasing
13 research activities) and section 280C(c) (with respect to
14 certain expenses for which the credit for increasing research
15 activities are allowable) of the Internal Revenue Code shall be
16 operative for the purposes of this chapter as provided in this
17 section; except that references to the base amount shall not
18 apply and credit for all qualified research expenses may be
19 taken without regard to the amount of expenses for previous
20 years. If section 41 of the Internal Revenue Code is repealed
21 or terminated prior to January 1, 2011, its provisions shall



1 remain in effect for purposes of the income tax law of the State
2 as modified by this section, as provided for in subsection (j).

3 (b) All references to Internal Revenue Code sections
4 within sections 41 and 280C(c) of the Internal Revenue Code
5 shall be operative for purposes of this section.

6 (c) There shall be allowed to each qualified business
7 subject to the tax imposed by this chapter an income tax credit
8 for qualified research activities equal to the credit for
9 research activities provided by section 41 of the Internal
10 Revenue Code and as modified by this section. The credit shall
11 be deductible from the taxpayer's net income tax liability, if
12 any, imposed by this chapter for the taxable year in which the
13 credit is properly claimed.

14 (d) Every qualified business, before March 31 of each year
15 qualified research and development activity was conducted in the
16 previous taxable year, shall submit a written, certified
17 statement to the director of taxation identifying:

- 18 (1) Qualified expenditures, if any, expended in the
19 previous taxable year; and
20 (2) The amount of tax credits claimed pursuant to this
21 section, if any, in the previous taxable year.



1 The department of taxation shall use the information from the
2 statements submitted each year under this subsection to prepare
3 a report published by April 1 of each year presenting the
4 information received under this subsection. The information
5 shall be presented in the aggregate and shall be available to
6 the public.

7 (e) The department shall:

- 8 (1) Maintain records of the names and addresses of the
9 taxpayers claiming the credits under this section and
10 the total amount of the qualified research and
11 development activity costs upon which the tax credit
12 is based;
- 13 (2) Verify the nature and amount of the qualifying costs
14 or expenditures;
- 15 (3) Total all qualifying and cumulative costs or
16 expenditures that the department certifies; and
- 17 (4) Certify the amount of the tax credit for each taxable
18 year and cumulative amount of the tax credit.

19 Upon each determination made under this subsection, the
20 department shall issue a certificate to the taxpayer verifying
21 information submitted to the department, including the
22 qualifying costs or expenditure amounts, the credit amount



1 certified for each taxable year, and the cumulative amount of
2 the tax credit during the credit period. The taxpayer shall
3 file the certificate with the taxpayer's tax return with the
4 department.

5 The director of taxation may assess and collect a fee to
6 offset the costs of certifying tax credit claims under this
7 section. All fees collected under this section shall be
8 deposited into the tax administration special fund established
9 under section 235-20.5.

10 (f) As used in this section:

11 "Basic research" under section 41(e) of the Internal
12 Revenue Code shall not include research conducted outside of the
13 State.

14 "Qualified business" means the same as in section 235-B.

15 "Qualified research" under section 41(d)(1) of the Internal
16 Revenue Code shall not include research conducted outside of the
17 State.

18 (g) If the tax credit for qualified performing arts
19 research activities claimed by a taxpayer exceeds the amount of
20 income tax payment due from the taxpayer, the excess of the tax
21 credit over payments due shall be refunded to the taxpayer;



1 provided that no refund on account of the tax credit allowed by
2 this section shall be made for amounts less than \$1.

3 (h) All claims for a tax credit under this section shall
4 be filed on or before the end of the twelfth month following the
5 close of the taxable year for which the credit may be claimed.
6 Failure to properly claim the credit shall constitute a waiver
7 of the right to claim the credit.

8 (i) The director of taxation may adopt any rules under
9 chapter 91 and forms necessary to carry out this section.

10 (j) Persons eligible to claim a tax credit under section
11 235-D may claim a tax credit under this section but not under
12 section 235-110.91. Persons not eligible for a tax credit under
13 section 235-D shall not claim a tax credit under this section.

14 Any person that has:

15 (1) Claimed the tax credit under section 235-110.91; and

16 (2) Not exhausted the right to claim the tax credit

17 provided thereunder,

18 shall be eligible to continue to claim the tax credit, without
19 reduction or requalification, pursuant to this section.

20 (k) This section shall not apply to taxable years
21 beginning after December 31, 2010."



1 SECTION 2. Chapter 201, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§201- Tourism training curriculum committee; members;

5 duties. (a) There is created a tourism training curriculum
6 committee to be placed within the department for administrative
7 purposes only.

8 (b) The tourism training curriculum committee shall
9 consist of the following members:

10 (1) A representative from the Hawaii tourism authority, to
11 be selected by the governor from a list created by the
12 president of the senate;

13 (2) A representative of the University of Hawaii school of
14 travel industry management, to be selected by the
15 governor from a list created by the president of the
16 senate;

17 (3) A representative from the Hawaii Restaurant
18 Association, to be selected by the governor from a
19 list created by the speaker of the house of
20 representatives; and



1 (4) A representative from the Hawaii Hotel Association, to
2 be selected by the governor from a list created by the
3 speaker of the house of representatives.

4 (c) Members of the tourism training curriculum committee
5 shall serve for a term of five years. Members shall not serve
6 more than two consecutive terms and shall not be subject to
7 section 26-34.

8 (d) The tourism training curriculum committee shall be
9 responsible for certifying the curriculum of any tourism
10 training facility in the State that is eligible for a tax credit
11 under section 235- ; provided that a certified curriculum shall
12 be submitted to the tourism training curriculum committee for
13 recertification every two years after the initial certification.

14 (e) Members of the tourism training curriculum committee
15 shall serve without compensation for their services but shall be
16 reimbursed for reasonable expenses, including travel or other
17 expenses incidental to their service on the advisory committee."

18 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "§235- Tourism training facility tax credit. (a) There
22 shall be allowed to each qualified taxpayer subject to the taxes



1 imposed by this chapter or chapter 237, a tax credit that may be
2 claimed for taxable years beginning after December 31, 2008, for
3 qualified costs in the development of a world-class tourism
4 training facility. The tax credit shall be deductible from the
5 taxpayer's net income tax liability, if any, imposed by this
6 chapter and, at the election of the taxpayer, from the tax
7 liability imposed by chapter 237.

8 (b) The tax credit earned shall be equal to the qualified
9 costs incurred from June 1, 2008, through May 31, 2018, up to a
10 maximum of \$ _____ of credits in the aggregate for all
11 qualified taxpayers for all years; provided that notwithstanding
12 the amount of tax credits earned in any year, a maximum of
13 \$ _____ of tax credits in the aggregate for all qualified
14 taxpayers may be used in any one taxable year. The credits over
15 \$ _____ shall be used as provided in subsection (d).

16 In the case of a partnership, limited liability company,
17 S corporation, estate trust, or association of apartment owners,
18 the tax credit allowable is for qualified costs incurred by the
19 entity. The costs upon which the tax credit is computed shall
20 be determined at the entity level.

21 (c) To qualify for the tax credit, a taxpayer shall:



- 1 (1) Meet the curriculum certification and recertification
2 requirements of the tourism training curriculum
3 committee as provided in section 201- ; and
- 4 (2) Have expended qualified costs on, be developing, or
5 operating a world-class tourism training facility in
6 the State; and
- 7 (3) Acquire or own the property upon which the tourism
8 training facility is sited, and lease, sell, or set
9 aside a portion of the property for use as training
10 and educational facilities for a period of not less
11 than ten years to a taxpayer meeting the requirements
12 of subsection (c)(1).
- 13 (d) If the tax credit under this section exceeds
14 \$ in the aggregate for all qualified taxpayers for any
15 taxable year or exceeds the taxpayer's tax liability under this
16 chapter or chapter 237 for any year for which the credit is
17 taken, the excess of the tax credit may be used as a credit
18 against the taxpayer's tax liability for the taxes set forth in
19 this section in subsequent years until exhausted; provided that
20 the taxpayer may continue to claim the credit provided in this
21 section if the qualified costs are incurred before June 1, 2018,
22 subject to the monetary ceilings subsection (b).



1 (e) Every claim, including amended claims, for a tax
2 credit under this section shall be filed on or before the end of
3 the twelfth month following the close of the taxable year for
4 which the credit may be claimed. Failure to comply with the
5 foregoing provision shall constitute a waiver of the right to
6 claim the credit.

7 (f) If, at any time during the period in which tax credits
8 are earned under this section, the costs incurred no longer meet
9 the definition of qualified costs, the credits claimed under
10 this section shall be recaptured. The recapture shall be equal
11 to one hundred per cent of the total tax credits claimed under
12 this section for the preceding taxable year; provided that the
13 amount of the credits recaptured shall apply only to those costs
14 that no longer meet the definition of qualified costs. The
15 amount of the recaptured tax credits determined under this
16 subsection shall be added to the taxpayer's tax liability for
17 the taxable year in which the recapture occurs under this
18 subsection.

19 (g) If any credit is claimed under this section, then no
20 taxpayer shall claim a credit under any chapter identified in
21 this section for the same qualified costs for which a credit is
22 claimed under this section.



1 (h) The director of taxation shall prepare any forms that
2 may be necessary to claim a credit under this section. The
3 director may also require the taxpayer to furnish information to
4 ascertain the validity of the claims for credits made under this
5 section and may adopt rules necessary to effectuate the purposes
6 of this section pursuant to chapter 91.

7 Every qualified taxpayer, no later than April 1 of each
8 year in which qualified costs were expended in the previous
9 taxable year, shall submit a written, certified statement to the
10 director of business, economic development, and tourism, in the
11 form specified by the director of business, economic
12 development, and tourism, identifying:

- 13 (1) Qualified costs, if any, expended in the previous
14 taxable year;
15 (2) The amount of tax credits claimed pursuant to this
16 section, if any, in the previous taxable year; and
17 (3) The tax liability under this chapter and chapter 237
18 against which the tax credits are claimed.

19 Any other law to the contrary notwithstanding, a statement
20 submitted under this subsection shall be a public document.

21 (i) The department of business, economic development, and
22 tourism shall maintain records of the names of taxpayers



1 eligible for the credits and the total amount of qualified costs
2 incurred from June 1, 2008, through May 31, 2018. The
3 department of business, economic development, and tourism shall
4 verify all qualified costs and, upon each determination, shall
5 issue a certificate to the taxpayer certifying:

- 6 (1) The amount of the qualified costs; and
7 (2) The amount of tax credit that the taxpayer is allowed
8 to use for the taxable year.

9 The department of business, economic development, and
10 tourism shall certify no more than \$ in credits in the
11 aggregate for all taxpayers for each taxable year; provided that
12 the department may verify qualified costs of no more than
13 \$ from June 1, 2008, through May 31, 2018. The
14 taxpayer shall file the certificate with the taxpayer's return
15 with the department of taxation.

16 (j) As used in this section:

17 "Qualified costs" means any costs for plans, design, and
18 construction, costs for equipment that is permanently affixed to
19 a building or structure, and acquisition of facilities for
20 tourism training facility purposes, costs related to personnel
21 due to reassignment for training while not being available for
22 normal duties, up to a total of \$ in the aggregate,



1 incurred after May 31, 2008, and before June 1, 2018, in the
2 State for the development of a world-class tourism training
3 facility; provided that "qualified costs" shall not include land
4 acquisition costs.

5 "Qualified taxpayer" means a person who fulfills the
6 requirements of subsection (c).

7 "Tourism training facility" means a facility that serves an
8 educational program that features service and management-
9 oriented training and a state-or-the-art laboratory for students
10 in the hospitality and tourism business industry, the curriculum
11 for which has been certified as provided in section 201- ."

12 SECTION 4. Section 235-17, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By renumbering the section, inserting it into the new
15 part of chapter 235, Hawaii Revised Statutes, established under
16 section 2 of this Act, and amending subsection (a) to read:

17 "~~§235-17~~ §235-D Motion picture, digital media, and film
18 production income tax credit. (a) Any law to the contrary
19 notwithstanding, there shall be allowed to each taxpayer subject
20 to the taxes imposed by this chapter, an income tax credit which
21 shall be deductible from the taxpayer's net income tax
22 liability, if any, imposed by this chapter for the taxable year



1 in which the credit is properly claimed. The amount of the
2 credit shall be:

3 (1) [~~Fifteen~~] Thirty per cent of the qualified production
4 costs incurred by a qualified production in any county
5 of the State with a population of over seven hundred
6 thousand; or

7 (2) [~~Twenty~~] Forty per cent of the qualified production
8 costs incurred by a qualified production in any county
9 of the State with a population of seven hundred
10 thousand or less.

11 A qualified production occurring in more than one county may
12 prorate its expenditures based upon the amounts spent in each
13 county, if the population bases differ enough to change the
14 percentage of tax credit.

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

21 If a deduction is taken under section 179 (with respect to
22 election to expense depreciable business assets) of the Internal



1 Revenue Code of 1986, as amended, no tax credit shall be allowed
2 for those costs for which the deduction is taken.

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

6 2. By amending subsection (h) to read:

7 "(h) Every taxpayer claiming a tax credit under this
8 section for a qualified production shall, no later than ninety
9 days following the end of each taxable year in which qualified
10 production costs were expended, submit a written, sworn
11 statement to the department of business, economic development,
12 and tourism, identifying:

- 13 (1) All qualified production costs as provided by
14 subsection (a), if any, incurred in the previous
15 taxable year;
- 16 (2) The amount of tax credits claimed pursuant to this
17 section, if any, in the previous taxable year; and
- 18 (3) The number of total hires versus the number of local
19 hires by category (i.e., department) and by county.

20 The department of business, economic development, and tourism
21 shall use the information from the statements submitted under
22 this section to prepare a report published by December 31



1 presenting the information received under this subsection. The
2 information shall be presented in the aggregate and shall be
3 available to the public."

4 3. By amending subsection (j) to read:

5 "(j) Total tax credits claimed per qualified productions
6 shall not exceed [~~\$8,000,000.~~] \$ _____."

7 SECTION 5. Section 235-110.46, Hawaii Revised Statutes, is
8 repealed.

9 ~~["~~§235-110.46~~ Attractions and educational facilities tax~~

10 ~~credit, Ko Olina Resort and Marina, Makaha Resort. (a) There~~

11 ~~shall be allowed to each qualified taxpayer subject to the taxes~~

12 ~~imposed by this chapter or chapter 237, 237D, 238, 239, 241, or~~

13 ~~431, a tax credit [that] may be claimed for taxable years~~

14 ~~beginning after December 31, 2004, for qualified costs in the~~

15 ~~development of facilities for attractions and educational~~

16 ~~purposes at Ko Olina Resort and Marina and at Makaha Resort.~~

17 ~~The tax credit shall be deductible from the taxpayer's net~~

18 ~~income tax liability, if any, imposed by this chapter and, at~~

19 ~~the election of the taxpayer, from the tax liability imposed by~~

20 ~~chapters 237, 237D, 238, 239, 241, and 431.~~

21 ~~(b) The tax credit earned shall be equal to the qualified~~

22 ~~costs incurred from June 1, 2003, through May 31, 2009, up to a~~



1 ~~maximum of \$75,000,000 of credits in the aggregate for all~~
2 ~~qualified taxpayers for all years; provided that notwithstanding~~
3 ~~the amount of tax credits earned in any year, a maximum of~~
4 ~~\$7,500,000 of tax credits in the aggregate for all qualified~~
5 ~~taxpayers may be used in any one taxable year. The credits over~~
6 ~~\$7,500,000 shall be used as provided in subsection (d). In the~~
7 ~~case of a partnership, limited liability company, S corporation,~~
8 ~~estate, trust, or association of apartment owners, the tax~~
9 ~~credit allowable is for qualified costs incurred by the entity.~~
10 ~~The costs upon which the tax credit is computed shall be~~
11 ~~determined at the entity level.~~

12 ~~(c) To qualify for the tax credit, a taxpayer shall:~~
13 ~~(1) Have expended qualified costs on and be developing a~~
14 ~~world class aquarium and marine science and mammal~~
15 ~~research facility at Ko Olina Resort and Marina; and~~
16 ~~(2) Dedicate one half of the net operating income of the~~
17 ~~world class aquarium to the State, beginning on the~~
18 ~~first day of the seventeenth year following the year~~
19 ~~in which the attractions and educational facilities~~
20 ~~credit was first taken; or~~
21 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~
22 ~~portion of the Makaha Resort for use as training and~~



1 ~~educational facilities for a period of not less than~~
2 ~~six years to a taxpayer meeting the requirements of~~
3 ~~subsection (c)(1).~~

4 ~~(d) If the tax credit under this section exceeds~~
5 ~~\$7,500,000 in the aggregate for all qualified taxpayers for any~~
6 ~~taxable year or exceeds the taxpayer's tax liability under this~~
7 ~~chapter or chapters 237, 237D, 238, 239, 241, and 431 for any~~
8 ~~year for which the credit is taken, the excess of the tax credit~~
9 ~~may be used as a credit against the taxpayer's tax liability for~~
10 ~~the taxes set forth in this section in subsequent years until~~
11 ~~exhausted; provided that the taxpayer may continue to claim the~~
12 ~~credit provided in this section if the qualified costs are~~
13 ~~incurred before June 1, 2009, subject to the monetary ceilings~~
14 ~~in subsection (b).~~

15 ~~(e) Every claim, including amended claims, for a tax~~
16 ~~credit under this section shall be filed on or before the end of~~
17 ~~the twelfth month following the close of the taxable year for~~
18 ~~which the credit may be claimed. Failure to comply with the~~
19 ~~foregoing provision shall constitute a waiver of the right to~~
20 ~~claim the credit.~~

21 ~~(f) If, at any time during the six year period in which~~
22 ~~tax credits are earned under this section, the costs incurred no~~



1 ~~longer meet the definition of qualified costs, the credits~~
2 ~~claimed under this section shall be recaptured. The recapture~~
3 ~~shall be equal to one hundred per cent of the total tax credits~~
4 ~~claimed under this section for the preceding taxable year,~~
5 ~~provided that the amount of the credits recaptured shall apply~~
6 ~~only to those costs that no longer meet the definition of~~
7 ~~qualified costs. The amount of the recaptured tax credits~~
8 ~~determined under this subsection shall be added to the~~
9 ~~taxpayer's tax liability for the taxable year in which the~~
10 ~~recapture occurs under this subsection.~~

11 ~~(g) If any credit is claimed under this section, then no~~
12 ~~taxpayer shall claim a credit under any chapter identified in~~
13 ~~this section for the same qualified costs for which a credit is~~
14 ~~claimed under this section.~~

15 ~~(h) The director of taxation shall prepare any forms that~~
16 ~~may be necessary to claim a credit under this section. The~~
17 ~~director may also require the taxpayer to furnish information to~~
18 ~~ascertain the validity of the claims for credits made under this~~
19 ~~section and may adopt rules necessary to effectuate the purposes~~
20 ~~of this section pursuant to chapter 91.~~

21 ~~Every qualified taxpayer, no later than March 31 of each~~
22 ~~year in which qualified costs were expended in the previous~~



1 ~~taxable year, shall submit a written, certified statement to the~~
2 ~~director of business, economic development, and tourism, in the~~
3 ~~form specified by the director of business, economic~~
4 ~~development, and tourism, identifying:~~

5 ~~(1) Qualified costs, if any, expended in the previous~~
6 ~~taxable year;~~

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

9 ~~(3) The tax liability under this chapter and chapters 237,~~
10 ~~237D, 238, 239, 241, and 431 against which the tax~~
11 ~~credits are claimed.~~

12 ~~Any other law to the contrary notwithstanding, a statement~~
13 ~~submitted under this subsection shall be a public document.~~

14 ~~(i) The department of business, economic development, and~~
15 ~~tourism shall maintain records of the names of taxpayers~~
16 ~~eligible for the credits and the total amount of qualified costs~~
17 ~~incurred from June 1, 2003, through May 31, 2009. The~~
18 ~~department of business, economic development, and tourism shall~~
19 ~~verify all qualified costs and, upon each determination, shall~~
20 ~~issue a certificate to the taxpayer certifying:~~

21 ~~(1) The amount of the qualified costs; and~~



1 ~~(2) The amount of tax credit that the taxpayer is allowed~~
2 ~~to use for the taxable year.~~

3 ~~The department of business, economic development, and~~
4 ~~tourism shall certify no more than \$7,500,000 in credits in the~~
5 ~~aggregate for all taxpayers for each taxable year; provided that~~
6 ~~the department may verify qualified costs of no more than~~
7 ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~
8 ~~taxpayer shall file the certificate with the taxpayer's return~~
9 ~~with the department of taxation.~~

10 ~~(j) As used in this section:~~

11 ~~"Ko Olina Resort and Marina" means the six hundred forty-~~
12 ~~two acres reclassified to urban district by Decision and Order~~
13 ~~entered on September 12, 1985, in Docket A83-562, by the land~~
14 ~~use commission.~~

15 ~~"Makaha Resort" means the three hundred thirty two acre~~
16 ~~property identified as tax map keys (1) 8-04-002 parcels 51, 52,~~
17 ~~53, 54, 55, and 67 and (1) 8-04-029-142.~~

18 ~~"Qualified costs" means any costs for plans, design, and~~
19 ~~construction, costs for equipment that is permanently affixed to~~
20 ~~a building or structure, and acquisition of facilities for~~
21 ~~educational purposes, up to a total of \$75,000,000 in the~~





1 aggregate, incurred after May 31, 2003, and before June 1, 2009,
 2 at either or both of:
 3 (1) Ko Olina Resort and Marina for the development of
 4 facilities for attractions and educational purposes,
 5 and for infrastructure within the Ko Olina Resort and
 6 Marina that is directly related to those facilities,
 7 including a world class aquarium, marine science and
 8 mammal research facilities, international sports
 9 training complex, a travel industry management intern
 10 campus, infrastructure for the transfer of ocean
 11 waters to the aquarium or marine mammal facilities, or
 12 both, seawater air conditioning, and other educational
 13 facilities developed or operated in cooperation with
 14 the University of Hawaii or other educational
 15 institutions; or
 16 (2) Makaha Resort for the development of a training and
 17 educational facility within a working resort and
 18 hotel,
 19 provided that "qualified costs" shall not include land
 20 acquisition costs.
 21 "Qualified taxpayer" means a person who fulfills the
 22 requirements of subsection (c)."]

1 SECTION 6. There is appropriated out of the general
 2 revenues of the State of Hawaii the sum of \$, or so
 3 much thereof as may be necessary for fiscal year 2007-2008, and
 4 the same sum, or so much thereof as may be necessary for fiscal
 5 year 2008-2009, for the planning, design, and construction of a
 6 permanent facility for the academy for creative media at the
 7 University of Hawaii.

8 The sums appropriated shall be expended by the University
 9 of Hawaii for the purposes of this Act.

10 SECTION 7. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 8. This Act, upon its approval, shall apply to
 13 taxable years beginning after December 31, 2007; provided that
 14 sections 2 and 6 shall take effect on July 1, 2007; provided
 15 that section 3, shall apply to taxable years beginning after
 16 December 31, 2008.

17

INTRODUCED BY:

Andry Jay
Bussells. Kohler
Carol Fukumaga

[Signature]
[Signature]
[Signature]
[Signature]



Report Title:

Economic Development; Taxation; Ko Olina Tax Credit; Digital Media Arts; Tourism Training Facility

Description:

Establishes the tourism training curriculum committee. Creates a new tax credit for a tourism training facility. Creates a new tax credit for digital media and performing arts. Repeals the Ko Olina tax credit. Appropriates funds.

