

JAN 26 2011

A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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 and
3 that its financial impact can be strengthened significantly if
4 existing incentives for the industry are adjusted.

5 The legislature also finds that there has been a dramatic
6 increase in the number of state and local governments attempting
7 to attract film productions. These jurisdictions have
8 experienced dramatic increases in in-state spending and
9 significant growth in workforce and infrastructure development.
10 More productions in Hawaii would stimulate more direct and
11 indirect tax revenue.

12 The legislature further finds that it is desirable to
13 provide tools to the film industry to encourage similar dramatic
14 growth in Hawaii because the film industry:

15 (1) Infuses significant amounts of new money into the
16 economy, which is dispersed across many communities
17 and businesses and which benefits a wide array of
18 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 wide array of architecture.

8 The legislature also finds that the industry has a strong
9 desire to hire locally and invests in the training and workforce
10 development of island-based personnel. It is the intent of this
11 Act to continue to encourage this industry practice of hiring a
12 significant number of residents and to support training and
13 opportunities to those residents.

14 The legislature further finds that it is necessary to
15 enhance the existing tax incentive programs that use the front-
16 end budgeting methods normally used by the film industry and
17 that lower production costs in order to allow Hawaii to compete
18 with other film production centers in attracting a greater
19 number of significant projects to the islands and to continue to
20 build our local film industry infrastructure.

21 The purpose of this Act is to encourage the growth of the
22 film industry by providing enhanced incentives that attract more



1 film and television productions to Hawaii, thereby generating
2 increased tax revenues.

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

5 "§235-17 Motion picture, digital media, ~~and~~ film
6 production, special or visual effects and animation, and media
7 infrastructure project income tax credit. (a) Any law to the
8 contrary notwithstanding, there shall be allowed to each
9 taxpayer subject to the taxes imposed by this chapter, an income
10 tax credit which shall be deductible from the taxpayer's net
11 income tax liability, if any, imposed by this chapter for the
12 taxable year in which the credit is properly claimed. The
13 amount of the credit shall be:

14 (1) [~~Fifteen~~] Thirty-five per cent of the qualified
15 production costs incurred by a qualified production in
16 any county of the State with a population of over
17 seven hundred thousand; or [~~(2) Twenty~~] forty per cent
18 of the qualified production costs incurred by a
19 qualified production in any county of the State with a
20 population of seven hundred thousand or less [-]; and

21 (2) Five per cent of the qualified special or visual
22 effects and animation production costs incurred by a



1 qualified production in any county of the State;
2 provided that this five per cent shall be in addition
3 to any income tax credit set forth in paragraph (1).

4 (b) In addition to the credits described in subsection
5 (a), beginning on or after July 1, 2011, and ending prior to
6 January 1, 2016, the following credits shall apply:

7 (1) Twenty-five per cent of the qualified costs incurred
8 for qualified media infrastructure projects in any
9 county of the State with a population of over seven
10 hundred thousand; or

11 (2) Forty per cent of the qualified costs incurred for
12 qualified media infrastructure projects in any county
13 of the State with a population of seven hundred
14 thousand or less.

15 (c) The following shall apply to the qualified media
16 infrastructure projects tax credits described in subsection (b):

17 (1) The base investment for a qualified media
18 infrastructure project shall be in excess of \$300,000;

19 (2) The qualified media infrastructure project tax credit
20 shall be non-refundable. The portion of the tax
21 credit that exceeds the tax liability of the taxpayer
22 for the tax year may be carried forward to offset net

1 income tax liability in subsequent tax years for a
2 period not to exceed ten taxable years or until
3 exhausted, whichever occurs first. The director of
4 taxation may require the tax credits to be taken or
5 assigned in the tax period in which the credit is
6 earned or may structure the tax credit in the initial
7 certification of the project to provide that only a
8 portion of the tax credit be taken over the course of
9 two or more years;

10 (3) The total qualified media infrastructure project tax
11 credit allowed for any state-certified infrastructure
12 project shall not exceed \$25,000,000;

13 (4) If all or a portion of an infrastructure project is a
14 facility that may be used for other purposes unrelated
15 to production or post production activities, then the
16 project shall be approved only if a determination is
17 made that the multiple use facility will support and
18 will be necessary to secure production or post
19 production activity for the production and post
20 production facility and the applicant provides
21 sufficient contractual assurances that the facility
22 will be used as a state-of-the-art production or post



1 production facility, or as a support and component
2 thereof, for the useful life of the facility. No tax
3 credits shall be earned on such multiple use
4 facilities until the production or post production
5 facility is complete;

6 (5) Tax credits for infrastructure projects shall be
7 earned only as follows:

8 (A) Construction of the infrastructure project shall
9 begin within six months of the initial
10 certification and shall be one hundred per cent
11 completed within a five year time frame;

12 (B) Expenditures shall be certified by the director
13 of taxation and credits shall not be earned until
14 that certification;

15 (C) No tax credit shall be allowed for expenditures
16 made for any infrastructure project after July 1,
17 2011, unless thirty per cent of the total base
18 investment provided for in the initial
19 certification of the project has been expended
20 prior to that date; provided that the
21 expenditures may be finally certified at a later
22 date; and



1 (D) For purposes of allowing tax credits against
2 state income tax liability or assignment of the
3 tax credits, the tax credits shall be deemed
4 earned at the time the expenditures are made,
5 provided that all requirements of this subsection
6 have been met and the tax credits have been
7 certified;

8 (6) For state-certified infrastructure projects, the
9 application for a qualified media infrastructure
10 project tax credit shall include:

11 (A) A detailed description of the infrastructure
12 project;

13 (B) A preliminary budget;

14 (C) A complete detailed business plan and market
15 analysis;

16 (D) Estimated start and completion dates; and

17 (E) If the application is incomplete, additional
18 information may be requested prior to further
19 action by the director of taxation.

20 (7) An application fee shall be submitted with the
21 application for a qualified media infrastructure
22 project tax credit based on the following:



- 1 (A) Two-tenths of one per cent times the estimated
- 2 total incentive tax credits; and
- 3 (B) The minimum application fee shall be four hundred
- 4 dollars and the maximum application fee shall be
- 5 five thousand dollars; and
- 6 (8) Prior to any final certification of a tax credit for a
- 7 state-certified infrastructure project, the applicant
- 8 for the infrastructure project tax credit shall submit
- 9 to the director of taxation an audit of the
- 10 expenditures audited and certified by an independent
- 11 certified public accountant as determined by rule.
- 12 Upon approval of the audit, the director of taxation
- 13 shall issue a final tax credit certification letter
- 14 indicating the amount of tax credits certified for the
- 15 state-certified infrastructure project to the
- 16 investors. Bank loan finance fees applicable to the
- 17 qualified media infrastructure project expenditures,
- 18 as certified by the director of taxation, and any
- 19 general excise taxes that have been paid on the bank
- 20 loan finance fees and remitted to the State may be
- 21 included as part of the tax credit.



1 There shall be a qualified local crew training program
2 rebate that shall be equal to fifty per cent of the hourly wages
3 of each resident participant in a qualified local crew training
4 program, and if incurred by a qualified production in any county
5 of the State, shall be reimbursed up to the first nine hundred
6 hours physically worked by the qualifying crew member in a
7 specialized craft position.

8 A qualified production shall be exempt from the transient
9 accommodations tax after thirty days of actual expenditures for
10 transient accommodations incurred in the State.

11 A qualified production occurring in more than one county
12 may prorate its expenditures based upon the amounts spent in
13 each 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 Subsections (d) through (l) shall apply only to the production
7 tax credits set forth in subsection (a).

8 ~~[(b)]~~ (d) The ~~[credit]~~ credits allowed under ~~[this~~
9 ~~section]~~ subsection (a) shall be claimed against the net income
10 tax liability for the taxable year~~[-]~~ in which the credit is
11 claimed. For the purposes of this section, "net income tax
12 liability" means net income tax liability reduced by all other
13 credits allowed under this chapter.

14 ~~[(e)]~~ (e) If the production tax credit under ~~[this~~
15 ~~section]~~ subsection (a) exceeds the taxpayer's income tax
16 liability, the excess of credits over liability shall be
17 refunded to the taxpayer; provided that no refunds or payment on
18 account of the tax credits allowed by this section shall be made
19 for amounts less than \$1. All claims, including any amended
20 claims, for tax credits under ~~[this section]~~ subsection (a)
21 shall be filed on or before the end of the twelfth month
22 following the close of the taxable year for which the credit may



1 be claimed. Failure to comply with the foregoing provision
2 shall constitute a waiver of the right to claim the credit.

3 ~~[(d)]~~ (f) To qualify for ~~[this]~~ a tax ~~[credit,]~~ credit
4 under subsection (a), a production shall:

5 (1) Meet the definition of a qualified production

6 ~~[specified in subsection (1)]~~;

7 (2) Have qualified production costs totaling at least

8 ~~[\$200,000,]~~ \$300,000;

9 (3) Provide the State, at a minimum, a shared-card, end-
10 title screen credit, where applicable; and

11 (4) Provide evidence of reasonable efforts to hire local
12 talent and crew~~[, and]~~

13 ~~[(5) Provide evidence of financial or in-kind contributions~~
14 ~~or educational or workforce development efforts, in~~
15 ~~partnership with related local industry labor~~
16 ~~organizations, educational institutions, or both,~~
17 ~~toward the furtherance of the local film and~~
18 ~~television and digital media industries].~~

19 ~~[(e)]~~ (g) On or after July 1, 2006, no qualified
20 production cost that has been financed by investments for which
21 a credit was claimed by any taxpayer pursuant to section
22 235-110.9 is eligible for credits under this section.



1 ~~[(f)]~~ (h) To receive ~~[the]~~ a tax ~~[credit]~~ credit under
2 subsection (a), the taxpayer shall first prequalify the
3 production for the credit by registering with the department of
4 business, economic development, and tourism during the
5 development or preproduction stage. Failure to comply with this
6 provision may constitute a waiver of the right to claim the
7 credit.

8 ~~[(g)]~~ (i) The director of taxation shall prepare forms as
9 may be necessary to claim a credit under ~~[this section.]~~
10 subsection (a). The director may also require the taxpayer to
11 furnish information to ascertain the validity of the claim for
12 credit made under ~~[this section]~~ subsection (a) and may adopt
13 rules necessary to effectuate the purposes of this section
14 pursuant to chapter 91.

15 ~~[(h)]~~ (j) Every taxpayer claiming a tax credit under ~~[this~~
16 ~~section]~~ subsection (a) for a qualified production shall, no
17 later than ninety days following the end of each taxable year in
18 which qualified production costs were expended, submit a
19 written, sworn statement to the department of business, economic
20 development, and tourism, identifying:



- 1 (1) All qualified production costs as provided by
2 subsection (a), if any, incurred in the previous
3 taxable year;
- 4 (2) The amount of tax credits claimed pursuant to [~~this~~
5 ~~section,~~] subsection (a), if any, in the previous
6 taxable year; and
- 7 (3) The number of total hires versus the number of local
8 hires by category (i.e., department) and by county.
- 9 [~~(i)~~] (k) The department of business, economic
10 development, and tourism shall:
- 11 (1) Maintain records of the names of the taxpayers and
12 qualified productions thereof claiming the tax credits
13 under subsection (a);
- 14 (2) Obtain and total the aggregate amounts of all
15 qualified production costs per qualified production
16 and per qualified production per taxable year; and
- 17 (3) Provide a letter to the director of taxation
18 specifying the amount of the tax credit per qualified
19 production for each taxable year that a tax credit is
20 claimed under subsection (a) and the cumulative amount
21 of the tax credit for all years claimed.



1 Upon each determination required under this subsection, the
2 department of business, economic development, and tourism shall
3 issue a letter to the taxpayer, regarding the qualified
4 production, specifying the qualified production costs and the
5 tax credit amount qualified for in each taxable year a tax
6 credit is claimed. The taxpayer for each qualified production
7 shall file the letter with the taxpayer's tax return for the
8 qualified production to the department of taxation.

9 Notwithstanding the authority of the department of business,
10 economic development, and tourism under this section, the
11 director of taxation may audit and adjust the tax credit amount
12 to conform to the information filed by the taxpayer.

13 ~~[(j)]~~ (l) Total production tax credits claimed under this
14 section per qualified production shall not [exceed \$8,000,000.]
15 be capped; provided that the qualified media infrastructure
16 project income tax credits shall be capped at \$25,000,000 in the
17 aggregate.

18 ~~[(k)]~~ (m) A taxpayer eligible to claim a tax credit under
19 this section may assign all or a portion of a tax credit under
20 this section to any assignee. A taxpayer may claim a portion of
21 a tax credit and assign the remaining amount. A tax credit
22 assignment under this section shall be irrevocable. The tax



1 credit assignment under this subsection shall be made on a form
2 prescribed by the director of taxation. A taxpayer claiming a
3 tax credit under this section shall send a copy of the completed
4 assignment form to the department of taxation in the tax year in
5 which the assignment is made and shall attach a copy of the form
6 to the tax return on which the tax credit is claimed.

7 ~~[(k)]~~ (n) Qualified productions shall comply with
8 subsections ~~[(d), (e), (f), and (h)].~~ (f), (g), (h), and (j).

9 ~~[(l)]~~ (o) For the purposes of this section:

10 "Base investment" means the costs incurred and financial
11 investment made to operate and sustain a qualified media
12 infrastructure project.

13 "Commercial":

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



1 "Digital media" means production methods and platforms
2 directly related to the creation of cinematic imagery and
3 content, specifically using digital means, including but not
4 limited to digital cameras, digital sound equipment, and
5 computers, to be delivered via film, videotape, interactive game
6 platform, or other digital distribution media (excluding
7 Internet-only distribution).

8 "Director" means the director of taxation.

9 "Post production" means production activities and services
10 conducted after principal photography is completed, including
11 but not limited to editing, film and video transfers,
12 duplication, transcoding, dubbing, subtitling, credits, closed
13 captioning, audio production, special effects (visual and
14 sound), graphics, and animation.

15 "Production" means a series of activities that are directly
16 related to the creation of visual and cinematic imagery to be
17 delivered via film, videotape, or digital media and to be sold,
18 distributed, or displayed as entertainment or the advertisement
19 of products for mass public consumption, including but not
20 limited to scripting, casting, set design and construction,
21 transportation, videography, photography, sound recording,
22 interactive game design, and post production.



1 "Qualified local crew training programs" means the
2 development and operation of a training program for State job
3 creation with a focus on film, video, television and digital
4 media production or post-production, with a budget of \$1,000,000
5 or greater. Commercials or other short form formats, with a
6 shooting schedule of less than eighteen days shall be excluded
7 from participation.

8 "Qualified media infrastructure project" means the
9 development, construction, renovation, or operation of a film,
10 video, television, or media production or post-production
11 facility and the immovable property and equipment related
12 thereto, or any other facility which supports and is a necessary
13 component of such proposed infrastructure project, that is
14 located in an county of the State; provided that the facility
15 may include a movie theater or other commercial exhibition
16 facility to assist in offsetting operating costs of the
17 production or postproduction facility, but shall not include a
18 facility used to produce pornographic matter or a pornographic
19 performance.

20 "Qualified production":

21 (1) Means a production, with expenditures in the State,
22 for the total or partial production of a feature-



1 length motion picture, short film, made-for-television
2 movie, commercial, music video, interactive game,
3 television series pilot, single season (up to twenty-
4 two episodes) of a television series regularly filmed
5 in the State (if the number of episodes per single
6 season exceeds twenty-two, additional episodes for the
7 same season shall constitute a separate qualified
8 production), television special, single television
9 episode that is not part of a television series
10 regularly filmed or based in the State, national
11 magazine show, or national talk show. For the
12 purposes of subsections (d) and (j), each of the
13 aforementioned qualified production categories shall
14 constitute separate, individual qualified productions;
15 and

- 16 (2) Does not include: daily news; public affairs programs;
17 non-national magazine or talk shows; televised
18 sporting events or activities; productions that
19 solicit funds; productions produced primarily for
20 industrial, corporate, institutional, or other private
21 purposes; and productions that include any material or
22 performance prohibited by chapter 712.



1 "Qualified production costs" means the costs incurred by a
2 qualified production within the State that are subject to the
3 general excise tax under chapter 237 or income tax under this
4 chapter and that have not been financed by any investments for
5 which a credit was or will be claimed pursuant to section
6 235-110.9. Qualified production costs include but are not
7 limited to:

- 8 (1) Costs incurred during preproduction such as location
9 scouting and related services;
- 10 (2) Costs of set construction and operations, purchases or
11 rentals of wardrobe, props, accessories, food, office
12 supplies, transportation, equipment, and related
13 services;
- 14 (3) Wages or salaries of cast, crew, and musicians;
- 15 (4) Costs of photography, sound synchronization, lighting,
16 and related services;
- 17 (5) Costs of editing, visual effects, music, other post-
18 production, and related services;
- 19 (6) Rentals and fees for use of local facilities and
20 locations;



- 1 (7) Rentals of vehicles and lodging, including any
2 transient accommodations tax under chapter 237D, for
3 cast and crew;
- 4 (8) Airfare for flights to or from Hawaii, and interisland
5 flights;
- 6 (9) Insurance and bonding;
- 7 (10) Shipping of equipment and supplies to or from Hawaii,
8 and interisland shipments; [~~and~~]
- 9 (11) Costs for equipment or items not readily obtainable in
10 the State which are passed through a qualified
11 resident vendor and upon which a mark-up and general
12 excise tax are paid;
- 13 (12) Bank loan finance fees applicable to the qualified
14 production expenditures as finally certified by the
15 director of taxation to the extent that a general
16 excise tax is paid and remitted to the State. For the
17 purposes of this section, banks providing loans to
18 qualified productions shall be considered service
19 vendors that are providing services to a production
20 company where the motion picture film product consists
21 in part of the value of services provided and shall be



1 subject to the one-half of one per cent tax rate under
2 section 237-18(c); and

3 ~~[(11)]~~ (13) Other direct production costs specified by the
4 department in consultation with the department of
5 business, economic development, and tourism.

6 "Qualified special or visual effects and animation
7 production" means special and or visual effects and animation
8 created primarily with digital technologies for designing,
9 modeling, rendering, lighting, painting, greenscreen, animating,
10 and compositing for qualified productions."

11 SECTION 3. Section 237D-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§237D-3 Exemptions.** This chapter shall not apply to:

14 (1) Health care facilities including all such facilities
15 enumerated in section 321-11(10);

16 (2) School dormitories of a public or private educational
17 institution providing education in grades kindergarten
18 through twelve, or of any institution of higher
19 education;

20 (3) Lodging provided by nonprofit corporations or
21 associations for religious, charitable, or educational
22 purposes; provided that this exemption shall apply



1 only to the activities of the religious, charitable,
2 or educational corporation or association as such and
3 not to any rental or gross rental the primary purpose
4 of which is to produce income even if the income is
5 used for or in furtherance of the exempt activities of
6 such religious, charitable, or educational corporation
7 or association;

8 (4) Living accommodations for persons in the military on
9 permanent duty assignment to Hawaii, including the
10 furnishing of transient accommodations to those
11 military personnel who receive temporary lodging
12 allowances while seeking accommodations in Hawaii or
13 while awaiting reassignment to new duty stations
14 outside the State;

15 (5) Low-income renters receiving rental subsistence from
16 the state or federal governments and whose rental
17 periods are for durations shorter than sixty days;

18 (6) Operators of transient accommodations who furnish
19 accommodations to full-time students enrolled in an
20 institution offering post-secondary education. The
21 director of taxation shall determine what shall be
22 deemed acceptable proof of full-time enrollment. This



- 1 exemption shall also apply to operators who furnish
2 transient accommodations to students during summer
3 employment;
- 4 (7) Accommodations furnished without charge such as, but
5 not limited to, complimentary accommodations,
6 accommodations furnished to contract personnel such as
7 physicians, golf or tennis professionals, swimming and
8 dancing instructors, and other personnel to whom no
9 salary is paid or to employees who receive room and
10 board as part of their salary or compensation; [~~and~~]
- 11 (8) Accommodations furnished to foreign diplomats and
12 consular officials who are holding cards issued or
13 authorized by the United States Department of State
14 granting them an exemption from state taxes[-]; and
- 15 (9) Accommodations furnished beyond thirty days to the
16 cast and crew of a qualified production, as defined in
17 section 235-17."

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20



S.B. NO. 1550

1 SECTION 5. This Act shall take effect upon its approval.

2

INTRODUCED BY: *Tommy Mercado*

By Request



Report Title:

Film Production Tax Credits; Exemption

Description:

Amends the motion picture, digital media, and film production tax credit to provide a designated income tax credit for certain qualifying counties. Removes tax credit caps. Provides an additional bonus for qualifying spending related to computer aided special or visual effects and animation. Establishes a non-refundable tax credit with a carry forward period of up to ten years to encourage film production development in certain qualified counties. Allows for a certain exemption from the transient accommodation tax for stays exceeding thirty days. Permits certain production tax credits to be assigned.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

