

JAN 18 2012

S.B. NO. 2043

A BILL FOR AN ACT

RELATING TO BUSINESS DEVELOPMENT IN HAWAII.

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 enhanced.

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 due to film productions in those state and local jurisdictions.
11 More productions in Hawaii would stimulate more direct and
12 indirect tax revenue.

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

16 (1) Infuses significant amounts of new money into the
17 economy, which is dispersed across many communities



1 and businesses and which benefits a wide array of
2 residents;

3 (2) Creates skilled, high-paying jobs;

4 (3) Has a natural dynamic synergy with Hawaii's top
5 industry, tourism, and is used as a destination
6 marketing tool for the visitor industry; and

7 (4) Is a clean, nonpolluting industry that values the
8 natural beauty of Hawaii and its diverse multicultural
9 population and wide array of architecture.

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

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



1 The purpose of this Act is to encourage business
2 development in Hawaii through the growth of the film industry by
3 providing enhanced incentives that attract more film and
4 television productions to Hawaii, thereby generating increased
5 tax revenues.

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

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

17 (1) [~~Fifteen~~] _____ per cent of the qualified
18 production costs incurred by a qualified production in
19 any county of the State with a population of over
20 seven hundred thousand; or [~~(2) Twenty~~] _____ per
21 cent of the qualified production costs incurred by a

1 qualified production in any county of the State with a
2 population of seven hundred thousand or less[-]; and
3 (2) _____ per cent of the qualified special or visual
4 effects and animation production costs incurred by a
5 qualified production in any county of the State;
6 provided that this _____ per cent shall be in
7 addition to any income tax credit set forth in
8 paragraph (1).

9 (b) In addition to the credits described in subsection
10 (a), beginning on July 1, 2012, and ending prior to January 1,
11 2017, the following credits shall apply:

12 (1) _____ per cent of the qualified production costs
13 incurred for qualified media infrastructure projects
14 in any county of the State with a population of over
15 seven hundred thousand; or

16 (2) _____ per cent of the qualified production costs
17 incurred for qualified media infrastructure projects
18 in any county of the State with a population of seven
19 hundred thousand or less.

20 (c) The following shall apply to the qualified media
21 infrastructure project tax credits described in subsection (b):



- 1 (1) The base investment for a qualified media
2 infrastructure project shall be in excess of
3 \$ _____ ;
- 4 (2) The qualified media infrastructure project tax credit
5 shall be non-refundable. The portion of the tax
6 credit that exceeds the tax liability of the taxpayer
7 for the tax year may be carried forward to offset net
8 income tax liability in subsequent tax years for a
9 period not to exceed ten taxable years or until
10 exhausted, whichever occurs first. The director of
11 taxation may require the tax credits to be taken or
12 assigned in the tax period in which the credit is
13 earned or may structure the tax credit in the initial
14 certification of the project to provide that only a
15 portion of the tax credit be taken over the course of
16 two or more years;
- 17 (3) The total qualified media infrastructure project tax
18 credit allowed for any state-certified infrastructure
19 project shall not exceed \$ _____ ;
- 20 (4) If all or a portion of an infrastructure project is a
21 facility that may be used for other purposes unrelated
22 to production or post production activities, then the



1 project shall be approved only if a determination is
2 made that the multiple use facility will support and
3 will be necessary to secure production or post
4 production activity for the production or post
5 production facility and the applicant provides
6 sufficient contractual assurances that the facility
7 will be used as a state-of-the-art production or post
8 production facility, or as a support and component
9 thereof, for the useful life of the facility. No tax
10 credits shall be earned on such multiple use
11 facilities until the production or post production
12 facility is complete;

13 (5) Tax credits for infrastructure projects shall be
14 earned only as follows:

15 (A) Construction of the infrastructure project shall
16 begin within six months of the initial
17 certification and shall be one hundred per cent
18 complete within a five year time frame;

19 (B) Expenditures shall be certified by the director
20 of taxation and credits shall not be earned until
21 certification is received; and



1 (C) 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 infrastructure projects that have been initially
9 certified by the department of taxation, the
10 application for a qualified media infrastructure
11 project tax credit shall include:

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

14 (B) A preliminary budget;

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

17 (D) Estimated start and completion dates; and

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



- 1 (7) An application fee shall be submitted with the
2 application for a qualified media infrastructure
3 project tax credit based on the following:
- 4 (A) _____ per cent times the estimated total
5 incentive tax credits; and
- 6 (B) The minimum application fee shall be \$400 and the
7 maximum application fee shall be \$5,000; and
- 8 (8) Prior to any final certification of a tax credit for a
9 qualified media infrastructure project that has been
10 initially certified by the department of taxation, the
11 applicant for the qualified media infrastructure
12 project tax credit shall submit to the director of
13 taxation an audit of the expenditures audited and
14 certified by an independent certified public
15 accountant as determined by rule. Upon approval of
16 the audit, the director of taxation shall issue a
17 final tax credit certification letter indicating the
18 amount of tax credits certified for the
19 state-certified infrastructure project to the
20 investors. Bank loan finance fees applicable to the
21 qualified media infrastructure project expenditures,
22 as certified by the director of taxation, and any



1 general excise taxes that have been paid on the bank
2 loan finance fees and remitted to the State may be
3 included as part of the tax credit.

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

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
2 allowed 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 qualified
7 production 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 qualified production tax credit under
15 [~~this 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,]~~ \$ _____ ;
- 9 (3) Provide the State, at a minimum, a shared-card,
10 end-title screen credit, where applicable;
- 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 qualified production tax credits claimed
14 under this section ~~[per]~~ for each qualified production shall not
15 ~~[exceed \$8,000,000.]~~ be capped; provided that the qualified
16 media infrastructure project income tax credits shall be capped
17 at \$ _____ in the aggregate.

18 (m) A taxpayer eligible to claim a tax credit under this
19 section may assign all or a portion of a tax credit under this
20 section to any assignee. A taxpayer may claim a portion of a
21 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 section 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
21 Internet-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 program" 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 that 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 post production 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



1 feature-length motion picture, short film,
2 made-for-television movie, commercial, music video,
3 interactive game, television series pilot, single
4 season (up to twenty-two episodes) of a television
5 series regularly filmed in the State (if the number of
6 episodes per single season exceeds twenty-two,
7 additional episodes for the same season shall
8 constitute a separate qualified production),
9 television special, single television episode that is
10 not part of a television series regularly filmed or
11 based in the State, national magazine show, or
12 national talk show. For the purposes of subsections
13 (d) and (j), each of the aforementioned qualified
14 production categories shall constitute separate,
15 individual qualified productions; 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
18 [~~post production,~~] post production, and related
19 services;
- 20 (6) Rentals and fees for use of local facilities and
21 locations;
- 22 (7) Rentals of vehicles and lodging for cast and crew;



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



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1 [~~(11)~~] (13) Other direct production costs specified by the
2 department in consultation with the department of
3 business, economic development, and tourism.

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

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect on July 1, 2012;
12 provided that this Act shall apply to taxable years beginning
13 after December 31, 2011.

14

INTRODUCED BY: 
By Request



S.B. NO. 2043

Report Title:

Business Development in Hawaii; Motion Picture, Digital Media, and Film Production Tax Credits; Maui County Council Package

Description:

Amends the motion picture, digital media, and film production tax credits to increase the tax credits to unspecified percentages and dollar amounts and to provide additional non-refundable tax credits for qualified media infrastructure projects in certain qualifying counties; provides an additional tax credit for qualified special or visual effects and animation production costs; raises the tax credit caps to unspecified amounts.

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