

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The purpose of this Act is to promote the  
2 motion picture, digital media, and film production industry in  
3 Hawaii by:

4           (1) Establishing a motion picture, digital media, and film  
5 production infrastructure tax credit of fifty per cent  
6 of qualified infrastructure costs;

7           (2) Requiring the expenditure of at least \$10,000,000 in  
8 qualified infrastructure costs;

9           (3) Providing for an annual payment to the Hawaii film  
10 office equal to one per cent of the tax credit  
11 received by the taxpayer; and

12           (4) Providing for a 100 per cent recapture of the tax  
13 credit if the infrastructure project ceases to meet  
14 the requirements of a qualified infrastructure  
15 project.

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



1           "§235- Motion picture, digital media, and film  
2 production infrastructure income tax credit. (a) Any law to  
3 the contrary notwithstanding, there shall be allowed to each  
4 taxpayer subject to the taxes imposed by this chapter, an income  
5 tax credit which shall be deductible from the taxpayer's net  
6 income tax liability, if any, imposed by this chapter for the  
7 taxable year in which the credit is properly claimed. The  
8 amount of the credit shall be fifty per cent of the qualified  
9 infrastructure costs incurred by a qualified taxpayer in any  
10 county of the State.

11           In the case of a partnership, S corporation, estate, or  
12 trust, the tax credit allowable is for qualified infrastructure  
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           (b) The credit allowed under this section shall be claimed  
18 against the net income tax liability for the taxable year. For  
19 the purposes of this section, "net income tax liability" means  
20 net income tax liability reduced by all other credits allowed  
21 under this chapter.



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

11        (d) To qualify for this tax credit, a qualified  
12 infrastructure project shall:

- 13        (1) Meet the definition of a qualified infrastructure  
14 project specified in subsection (1);  
15        (2) Have qualified infrastructure costs totaling at least  
16 \$10,000,000; and  
17        (3) Provide evidence of reasonable efforts to hire Hawaii  
18 residents.

19        (e) To receive the tax credit, the taxpayer shall first  
20 prequalify the infrastructure project for the credit by  
21 registering with the department of business, economic  
22 development, and tourism during the development stage. Failure



1 to comply with this provision may constitute a waiver of the  
2 right to claim the credit.

3 (f) If all or a portion of an infrastructure project is a  
4 facility that may be used for other purposes unrelated to  
5 production or post-production activities, then the project shall  
6 be approved only if a determination is made that the multiple-  
7 use facility will support and will be necessary to secure  
8 production or post-production activity.

9 The taxpayer may also request a comfort ruling from the  
10 department of taxation regarding the applicability of the tax  
11 credit to a specific qualified infrastructure project.

12 (g) The director of taxation shall prepare forms as may be  
13 necessary to claim a credit under this section. The director  
14 may also require the taxpayer to furnish information to  
15 ascertain the validity of the claim for credit made under this  
16 section and may adopt rules necessary to effectuate the purposes  
17 of this section pursuant to chapter 91.

18 (h) An annual fee for administration of the tax credit  
19 shall be payable to the department of business, economic  
20 development, and tourism Hawaii film office and shall be  
21 submitted with the application for a qualified infrastructure  
22 project tax credit. The annual fee shall be equal to one per



1 cent of the tax credit received by the taxpayer under this  
2 section. The fee shall become first payable within thirty days  
3 of the issuance of the determination letter specified in  
4 subsection (k).

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

11 (1) All qualified infrastructure costs, if any, incurred  
12 in the previous taxable year;

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

15 (3) The number of total employees hired versus the number  
16 of Hawaii residents hired, by job category and by  
17 county.

18 (j) The department of business, economic development, and  
19 tourism shall:

20 (1) Maintain records of the names of the taxpayers and  
21 qualified infrastructure projects thereof claiming the  
22 tax credits under subsection (a);



1       (2) Obtain and total the aggregate amounts of all  
2           qualified infrastructure costs per qualified  
3           infrastructure project per taxable year; and  
4       (3) Provide a letter to the director of taxation  
5           specifying the amount of the tax credit per qualified  
6           infrastructure project for each taxable year that a  
7           tax credit is claimed and the cumulative amount of the  
8           tax credit for all years claimed.

9       (k) Upon each determination required under this  
10       subsection, the department of business, economic development,  
11       and tourism shall issue a letter to the taxpayer, regarding the  
12       qualified infrastructure project, specifying the qualified  
13       infrastructure costs and the tax credit amount qualified for in  
14       each taxable year a tax credit is claimed. The taxpayer for  
15       each qualified infrastructure project shall file the letter with  
16       the taxpayer's tax return for the qualified infrastructure  
17       project to the department of taxation. Notwithstanding the  
18       authority of the department of business, economic development,  
19       and tourism under this section, the director of taxation may  
20       audit and adjust the tax credit amount to conform to the  
21       information filed by the taxpayer.

22       (l) For the purposes of this section:



1       "Qualified infrastructure costs" means the total costs  
2 incurred by a qualified infrastructure project within the State  
3 that are subject to the general excise tax under chapter 237 or  
4 income tax under this chapter and that have not been financed by  
5 any investments for which a credit was or will be claimed  
6 pursuant to section 235-110.9. Qualified infrastructure costs  
7 shall not include the cost of purchasing or leasing real  
8 property.

9       "Qualified infrastructure project" means a construction  
10 project in the State, for the development, construction, or  
11 renovation of a film, video, television, or media production or  
12 post-production facility and the immovable property and  
13 equipment related thereto, or any other facility that supports  
14 and is a necessary component of such infrastructure project.

15       (m) If at any time the infrastructure project ceases to be  
16 a qualified infrastructure project, the credit claimed under  
17 this section shall be recaptured. The amount of the recaptured  
18 tax credit determined under this subsection shall be added to  
19 the taxpayer's tax liability, up to one hundred per cent of the  
20 tax credit, for the taxable year in which the recapture occurs  
21 under this subsection. The taxpayer shall consent to a tax lien  
22 in the amount of the tax credit claimed under this section on



1 the property as a condition to receiving the tax credit under  
2 this section."

3 SECTION 3. New statutory material is underscored.

4 SECTION 4. This Act, upon its approval, shall apply to  
5 taxable years beginning after December 31, 2011.

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INTRODUCED BY: Carol Fulkerson





# S.B. NO. 2462

**Report Title:**

Taxation; Motion Picture, Digital Media, and Film Production  
Infrastructure Tax Credit

**Description:**

Establishes a motion picture, digital media, and film production infrastructure tax credit of fifty per cent of qualified infrastructure costs; requires qualified expenditure of at least \$10,000,000; provides for an annual payment to the department of business, economic development, and tourism Hawaii film office equal to one per cent of the tax credit received by the taxpayer; provides for a 100 per cent recapture of the tax credit if the facilities are no longer used for a qualified activity; applies to taxable years beginning after 12/31/2011.

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

