NEIL ABERCROMBIE
GOVERNOR

RICHARD C. LIM
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
RICHARD C. LIM
Director
Department of Business, Economic Development, and Tourism
before the
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TECHNOLOGY
Monday, February 6, 2012
1:30 p.m.
State Capitol, Conference Room 016

in consideration of
SB2462
RELATING TO TAXATION

Chair Fukunaga, Vice Chair Wakai, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) offers the following comments on SB2462, which seeks to establish a motion picture, digital media and film production tax credit of 50% of qualified infrastructure costs; a minimum qualified expenditure of $10 million; to include an annual payment to DBEDT/Hawaii Film Office equal to 1% of the tax credit received by the taxpayer; and a 100% recapture of the tax credit if the facilities are no longer used for a qualified activity. We respectfully oppose this bill.

We recognize there is a shortage of infrastructure statewide, making it difficult to support the growing demands of Hawaii's film industry. The fact that we have only one state-owned and operated film studio complex and numerous productions vying for its use, is a disincentive for productions who are considering filming in Hawaii. We also know that without infrastructure incentives it will be difficult to encourage future development of these facilities. However, we must balance this need for infrastructure with the potential fiscal impacts.

Thank you for the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
INTERIM DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1564

To: The Honorable Carol Fukunaga, Chair,
and Members of the Senate Committee on Economic Development & Technology

Date: Monday, February 6, 2012
Time: 1:15 P.M.
Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 2111 Relating to Film and Digital Media Industry Development

The Department of Taxation (Department) defers to the Department of Business, Economic Development and Tourism (DBEDT) on the merits of S.B. 2111.

S.B. 2111 proposes to modify Section 235-17, Hawaii Revised Statutes (HRS), motion picture, digital media, and film production tax credit as follows:

- Increases the tax credit amount from 15% of the qualified production costs incurred on Oahu to 25%, and from from 20% of the qualified production costs incurred on neighbor islands to 30%;
- Increases the cap per qualified production from $8 million to $16 million;
- Adds a provision that in case of a partnership, S corporation, estate, or trust, the tax credit may be recovered directly by the entity that incurred the qualified production costs;
- Changes the definition of “digital media” to delete the exclusion of “Internet only distribution”;
- Changes the definition of “qualified production” to include the creation of related content intended for distribution over the Internet, wireless network, or similar methods of distribution; and
- Extends the sunset date of January 1, 2016 to January 1, 2027.

The bill would take effect on July 1, 2012. The Department notes that due to the provision that allows a partnership to claim the tax credit at the entity level, modification to the tax form and computer system is required. Due to the lack of resources and staffing, the Department will not be able to implement this proposed change by July 1, 2012.

Thank you for the opportunity to provide comments.

Testimony to

Senate Committee on Economic Development and Technology

Monday, February 6, 2012

By: Stephan D. Smith

President, SHM Partners/Film Studio Group

SB 2462—Relating to Taxation

Senator Carol Fukunaga, Chair; Senator Glenn Wakai, Vice Chair

I am writing in support of a State infrastructure credit for purpose-built studio facilities because without it the type of studio infrastructure necessary to attract continuous production and establish a sustainable film and television industry in Hawaii will not happen. Our company has endeavored to develop a first- class studio campus in the State for the past several years; however, as a result of more stringent underwriting requirements caused by the financial crisis and relatively higher construction costs in Hawaii, we have not been, and will not be, able to do so without a significant infrastructure credit. This could take the form of a straight credit of at least 25% or a larger credit tied to some form of security and/or repayment.

Public assistance in building film and television production infrastructure is not a new concept. Cinecitta in Rome, Studio Babelsberg in Potsdam-Babelsberg, Barrandov in Prague and Ciudad de la Luz in Alicante, Spain were all built with government funds (the former two have since been mostly privatized) while Fox Studios Australia, Warner/ (Village) Roadshow Studios in Queensland, Central City Studios in Melbourne, Stone Street Studios (Peter Jackson's) in Wellington, N.Z. Bridge Studios in Vancouver, B.C. were all built with very substantial government assistance in the form of free or subsidized land, grants, low interest loans and/or direct investment.

Vancouver's assistance to the Province's film infrastructure, together with its wage-based incentive program, is the reason it has grown into one of the four largest film centers in North America averaging in excess of $1.4 billion (CDN) over the past five years.

Toronto's considerable assistance in underwriting Toronto Film Studios in the Portlands area and New York's sweetheart deal with Steiner Studios in the Brooklyn Navy Yards cemented them as two of the other primary production hubs in the Americas. And Louisiana's 40% infrastructure credit was a key component in helping to underwrite a number of small studios and raise production from $10 million in 2002 to over a billion dollars in 2011.

It's clear that production is increasingly gravitating to places with studios, so jurisdictions which have supported studio infrastructure have set themselves apart from those offering only location opportunities by dramatically increasing local expenditures (location spending typically amounts

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to well under 50% of total production cost) and building an industry comprised of skilled, high paying jobs.

Hawaii offers lush tropical locations as well as more urban settings, optimal natural lighting, safety and talented crew. Interestingly, the State also boasts an abnormally high incidence of creative, media-savvy young people. However, unless there is public investment in infrastructure, Hawaii, which is already relatively expensive, will progressively lose productions to alternative tropical locations which offer studio facilities. This will inevitably lead to an ever greater exodus of students graduating in media disciplines seeking job opportunities elsewhere.

The lure of Hawaii for producers of visual content is incontrovertible—over 50 years of television production and nearly 100 years of filmmaking, not to mention hundreds of commercials. Lately, the hit television show, *Hawaii Five-0*, and the Oscar nominated film, *Descendants*, have brought much attention, and an attendant boost in tourism, to the State similar to what *Lord of the Rings* did for New Zealand.

Thanks to Hawaii's natural attributes, and accentuated by its film incentives, production spending climbed from $135 million in 2009 to over $390 million in 2010 when *Lost* was wrapping and *Hawaii Five-0* was getting started and *Pirates of the Caribbean*, *Descendants*, *Battleship* and *Just Go With It* were all in production. The number would have been higher for 2010 as well as for 2011 had there been stages available to capture a greater share of the production budget. So, while 2010 was a banner year for production expenditures in Hawaii, the numbers for 2011 would have declined far less as studio facilities would have helped retain existing and attract new productions.

The film business is changing, and modern stage facilities, along with a predictable film incentive regime, are needed in order for the State to meet rising competition and to build a stable industry with a consistent, well compensated employment base rather than endure the boom-and-bust of the location-based business.

TESTIMONY OF NBC UNIVERSAL MEDIA, LLC

HEARING DATE/TIME: Monday, February 6, 2012
1:30 p.m. in Conference Room 016

TO: Senate Committee on Economic Development and Technology

RE: • Testimony in Strong Support of SB2111 and SB2741.

• Testimony in Support of the Spirit and Intent of SB2043 and SB2462.

Dear Chair, Vice-Chair and Committee Members:

I. INTRODUCTION

NBC Universal Media, LLC ("NBC/U") develops, produces, broadcasts and distributes motion pictures, television programs and related content around the world. Over the last several years, local industry stakeholders, the Hawaii Legislature and the people of Hawaii have developed a clear consensus that the motion picture, television and related digital media industries (the "Film Industry") in Hawaii has become an important component of a diversified economy and has had a positive financial impact on the State of Hawaii which can be strengthened significantly if Hawaii's existing incentives for the Film Industry are enhanced.

As a result of the enormous infusion of cash that Film Industry productions bring to production locales, there has been a dramatic increase in the number of state and local governments attempting to attract film productions. Recent studies have confirmed that these jurisdictions have experienced dramatic increases in in-state spending and significant growth in workforce and infrastructure development due to film productions in those state and local jurisdictions and that such productions stimulate more direct and indirect tax revenue and that a properly designed tax incentive program can actually increase (on a net basis) local tax revenues. (See, Ernst & Young - Economic and Fiscal Impacts of the New Mexico Film Product Tax Credit; Meyers Norris Penny - Economic Contributions of the Georgia Film and Television Industry; Cloudberry Communications – The Millennium Report (Economic impact and exposure value for the Stockholm region in the Swedish Millennium feature films)).

It is also clear that the State of Hawaii should encourage similar dramatic growth in Hawaii because the Film Industry:

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

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

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

(4) Acts synergistically to bolster the local music industry and thereby assists in preserving and disseminating Hawaii's host culture by introducing millions of people around the world to Hawaii's recording artists, music and dance. A compelling example of these benefits can be seen in connection with the critically acclaimed and popular motion picture "The Descendents" produced and directed by Alexander Payne and based upon a novel by local author Kaui Hart Hemmings. The Descendents garnered a Best Picture award at the prestigious Golden Globe Awards and landed George Clooney a Golden Globe for Best Actor. In addition, The Descendents has been nominated for the following Oscars in 2012: Best Picture, Best Actor, Best Director, Best Adapted Screenplay, and Best Editing. The Descendents boasts a fabulous sound track consisting entirely of preexisting musical compositions and sound recordings written and performed by up and coming and iconic local musicians from Makana and Jeff Peterson to Sonny Chillingworth and Gabby Pahinui (see attached hereto as Exhibit "A" for a complete list of the music used in The Descendents); and

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

The Film Industry also has a strong desire to hire locally and invest in the training and workforce development of island-based personnel and intends to continue the practice of hiring a significant number of residents and to support training and opportunities for those residents.

However, it is respectfully submitted that in order to stimulate such dramatic growth it is necessary to enhance Hawaii's existing tax incentive program (that uses the front-end budgeting methods normally used by the Film Industry and that lower production costs) in order to allow Hawaii to effectively compete with other film production centers in attracting a greater number of significant projects to the islands and to continue to build our local film industry infrastructure.

In the Spring of 2011, the State of Hawaii, through the Creative Industries Division of DBEDT, reached out to NBC/U to inquire as to what NBC/U would consider to be essential modifications to Hawaii film tax incentive program in order to build and sustain a robust Film Industry in Hawaii. After careful consideration, NBC/U recommended a few reasonable and measured modifications to Act 88 designed to make Hawaii's incentive program more stable, competitive and technologically friendly given the emerging significance of internet delivered content as an adjunct to traditional content delivery. Specifically, the following modifications to Act 88 (the "Proposed Act 88 Modifications") were respectfully recommended:

PROPOSED MODIFICATIONS TO ACT 88 THAT ARE LIKELY TO SIGNIFICANTLY INCREASE PRODUCTION ACTIVITY IN HAWAII

(1) Increase the refundable production credit ("RPC") by 10% **with the increase tied to local hires/vendors**.

(2) Eliminate the prohibition against internet only projects from qualifying for the RPC.

(3) Allow pass-through entities to recover the RPC directly.

(4) Increase the per production RPC cap from $8,000,000 to $16,000,000.

(5) Allow webisodes to be included in the RPC application for the related series (avoids failing to meet the $200K minimum spend).

(6) Extend sunset date of Act 88 to 2025 to assure certainty and predictability for long term production planning.

II. THE BILLS

Several bills are before this Committee which, in various ways, seek to encourage business development in Hawaii through the growth of the film industry by providing enhanced incentives that attract more film and television productions to Hawaii, thereby generating increased tax revenues.

A) SB2111. SB2111 embodies the Proposed Act 88 Modifications and is therefore strongly supported by NBC/U. NBC/U also supports the notion that the proposed increase in the RPC be tied to "local" hires thereby creating more jobs for Hawaii residents. In this regard, other jurisdictions have successfully tied some portion of their tax credit program to "local" hires. These other programs may provide guidance regarding the appropriate language/mechanism to be used to implement a "local" hire tie-in.

B) SB2741. SB2741 eliminates the Act 88 sunset date. The elimination of a sunset date or the extension of the sunset date for a significant period of time is important to the Film Industry because it provides some degree of assurance that the program will be around for years to come thereby allowing major projects, which require long term planning, to consider Hawaii as a production locale. Accordingly, NBC/U strongly supports the spirit and intent of SB2741.

C) SB2043. SB2043 seeks to increase the production credit available under Act 88 but does not provide a specified percentage increase. It is respectfully submitted that the tipping point at which an incentive program will have a meaningful pull on production activity exists at around 25%. This is especially true in the case of Hawaii because the cost of doing business here is considerably higher than on the mainland.

SB2043 also seeks to develop Hawaii's Film Industry infrastructure by providing nonrefundable tax credits for qualified media infrastructure projects in the State of Hawaii. NBC/U, as a general proposition, supports the development of infrastructure as an integral part of a robust Film Industry but not at the expense of a competitive production credit. In other words, given limited resources, if the State of Hawaii had to choose between allocating tax dollars to infrastructure development or production credits, it is respectfully submitted that an increase in the production credit would have a more significant and profound ability to bring production work to the State of Hawaii than the addition of an infrastructure credit. If both infrastructure development and an increase in the RPC can be carried out simultaneously, that would be the best of both worlds. However, given a choice between one or the other, it is submitted that the increase in the production credit would result in increased demand and that the local marketplace would respond to that demand by utilizing and/or repurposing existing assets for production use.

D) SB2462. SB2462, like SB2043, is intended to help develop Film Industry infrastructure in the State of Hawaii. For the same reasons stated hereinabove with respect to SB2043, it is respectfully submitted that the priority should be to increase the production credit to fill the "pipeline" with production projects. As the "pipeline" fills, the local marketplace will respond to this demand as noted above.

III. CONCLUSION

While Hawaii may be perceived as a highly desirable destination that would instinctively attract the Film Industry, the State needs to take affirmative steps to ensure Hawaii is at the top of the list and not left behind in the wake of other domestic and international locales. SB2111 will help to ensure Hawaii is competitive with film destinations around the globe and does so in a manner that is sustainable and rational for the long term. NBC/U stands ready to work with the Legislature, the Administration and local Film Industry stakeholders to improve and enhance Hawaii's film incentive program to help build a robust, stable and sustainable Film Industry in the State of Hawaii.

William G. Meyer, III
On behalf of
NBC Universal Media, LLC

THE DESCENDANTS
MUSIC CREDITS

1. KA MAKANI KA'ILI ALOHA
   Written by Matthew Kane
   Arranged and Performed by Gabby Pahinui

2. KALENA KAI
   Written by John Kalapana
   Performed by Keola Beamer and George Winston

3. PAKA UA
   Written by Ozzie Kotani
   Performed by Ozzie Kotani and Daniel Ho

4. JEAN'S THEME
   Written by Andrew Lein
   Performed by Steve Di Laudo and Andrew Lein

5. HI'ILAWE
   Traditional
   Arranged and Performed
   by Sonny Chillingworth

6. AN ARTIST'S VISION
   Written and Performed
   by Anthony Natividad

7. KA MELE OKU'U PU'UWAI
   Traditional
   Arranged by Solomon Ho'opi'i
   Performed by Sol Hoopii's Novelty Trio

8. KALENA KAI
   Written by John Kalapana
   Performed by Keola Beamer

9. KAUA'I BEAUTY
   Written by Henry Wai'au
   Arranged and Performed by Gabby Pahinui

10. PAPA SIA
    Written by Johnny Noble
    Performed by 'Elua Kane

EXHIBIT A

THE DESCENDANTS
Music Credits

11. LEAHI
Written by Mary Robins and Johnny Noble
Performed by Gabby Pahinui

12. AUWE
Written and Performed by Ray Kane

13. POLI`AHU
Written and Performed by Keola Beamer

14. HI`ILAWE
Traditional
Arranged and Performed by Gabby Pahinui

15. INTERLUDE WITH UKELELE
Written and Performed
by George Kahumoku, Jr. and Richard Ford

16. `IMI AU IA `OE
Written by Charles E. King & Queen Lydia Lili'uokalani
Arranged and Performed by Keola Beamer

17. HOLOHOLO KA`A
Written and Performed by Jeff Peterson

18. IN YA SYSTEM
Written by Don Kawaauhau, Shane Veincent and Caleb Richards
Performed by Sudden Rush
By arrangement with Robert Sterling Music New York

19. PUA LANI
Written and Performed by Jeff Peterson

20. NIGHT BLOOMING CEREUS
Written and Performed by Jeff Peterson and Riley Lee

21. HAWAIIAN SKIES
Written and Performed
by Jeff Peterson

22. DEEP IN AN ANCIENT HAWAIIAN FOREST
Written and Performed by Makana

23. MISS BEA
Written and Performed by McCoy Tyner
By arrangement with Manhattan Production Music

24. WAI O KE ANIANI
Traditional
Arranged and Performed by Gabby Pahinui

25. KA LOKE
Written by Mary Heanu and Johnny Noble
Performed by Makaha Sons with Dennis Pavao

26. `ULILI E
Written by Johnny Noble, Harry Naope and George Koahi
Performed by Rev. Dennis Kamakahi

27. 'ULILI E
Written by Johnny Noble, Harry Naope and George Koahi
Performed by Jeff Peterson

28. PUA HONE
Written and Performed by Rev. Dennis Kamakahi

29. PINE TREE SLACK KEY
Written and Performed by Pancho Graham

30. WONDERLAND
Written and Performed by
Eugene Kulikov

31. SANOE
Written by Queen Lydia Lili`uokalani
Arranged and Performed by Danny Carvalho

32. NANI WAI`ALE`ALE
Written by Dan Pokipala, Sr.
Performed by Kanak Attack

33. THE YODEL SONG
Written by Gary Haleamau
Performed by Kanak Attack

THE DESCENDANTS
Music Credits

34. FAITH IN RAIN
Written by Maureen Davis and Adam Daniel
Performed by The Flutterbies featuring Maureen Davis

35. HUMMINGBIRD HEART
Written by Maureen Davis and Adam Daniel
Performed by The Flutterbies featuring Maureen Davis

36. HE`EIA
Written by David Bray, Linda Bray and Johnny Noble
Performed by Gabby Pahinui and Sons Of Hawaii

37. HAPUNA SUNSET
Written and Performed by
Charles Michael Brotman

38. THE HARSHEST PLACE ON EARTH
(from the motion picture March Of The Penguins)
Composed by Alex Wurman

39. HI`ILAWE
Traditional
Arranged by Bernie Ka`ai
Performed by Ernest Tavares

40. MOM
Written and Performed by Lena Machado

ISLAND
FILM GROUP

February 5, 2012

TO: Senate Committee on Economic Development and Technology
The Honorable Carol Fukunaga, Chair
The Honorable Glen Wakai, Vice Chair

FROM: Ricardo S. Galindez, Co-Owner, Island Film Group
Roy J. Tjioe, Co-Owner, Island Film Group

RE: Testimony In Support of SB 2462

Aloha Chair, Vice Chair, and Members of the Committee:

Thank you for the opportunity to testify in support of SB 2462

HAWAII NEEDS DEDICATED FILM AND TELEVISION PRODUCTION FACILITIES

- The **Diamond Head Studio** is too small for medium-large film productions and can only support one production at a time.
- The old **CompUSA** facility (used for the filming of "The Descendants") is now a used car lot and was recently sold to A&B for redevelopment.
- The **Honolulu Advertiser** building property (currently used for the production of "Hawaii 5-0") is scheduled for redevelopment.
- **Halawa Valley Studios** (the largest privately-owned production facility in Hawaii) was used by the producers of "Pirates of the Caribbean" but was only large enough to house the wardrobe department.

FILM AND TELEVISION PRODUCTION STUDIOS ARE DIFFICULT TO FINANCE

- Even in the best of economic times, film and television production facilities are difficult to finance through traditional lending sources given the **short-term nature of production tenants**.
- In almost every situation, film studios are financed by a combination of **public and private resources**.

SB 2462 PROVIDES HAWAII WITH MULTIPLE ECONOMIC BENEFITS

- Purpose-built film and television production facilities would accommodate **multiple, large-budget film and television productions** resulting in the hiring of **local cast and crew** as well as the purchase of production services and materials from **local vendors**.
- The construction of film and television production facilities would result in the hiring of **local construction workers** and the purchase of construction services and materials from **local vendors**.
- The 1% annual administration fee would provide **private funding of the Hawaii Film Office**.

SB 2462 IS A FISCALLY RESPONSIBLE TAX CREDIT

- The tax credit would be used to construct **permanent film and television production facilities.**
- The $10m threshold targets the tax credit to **substantial construction projects.**
- The tax credit is subject to a **100% recapture (secured by a tax lien)** should a facility cease to be used for film and television production.
- The **1% annual administration fee** would support funding of the Hawaii Film Office.

PENDING FILM AND TELEVISION PRODUCTION FACILITY PROJECT

- Kapolei Studios
  - 20 acre property
  - 4 – 18,000sf sound stages
  - 60,000sf of production office
  - Set Construction and Equipment buildings
  - Student Annex

About Island Film Group
Island Film Group (IFG) is one of the largest local film and television production companies in Hawaii. Since its formation in 2007, IFG has produced a television series ("Beyond the Break"), three television movies for Lifetime Television Network, countless national and international television commercials, and three independent feature films ("Soul Surfer", "Princess Ka`iulani", and "Knots"). Our projects have employed hundreds of Hawaii residents and spent millions of dollars on local goods and services. In addition, IFG, in partnership with Hawaii Media Inc., owns and operates Halawa Valley Studios, the largest private film and television production facility in Hawaii.

Thank you for the opportunity to testify on this important bill.

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Thank you for the opportunity to testify on this important bill.

L E G I S L A T I V E

TAXBILLSERVICE

126 Queen Street, Suite 304 TAX FOUNDATION OF HAWAII Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Motion picture, digital media and film production infrastructure tax credit

BILL NUMBER: SB 2462

INTRODUCED BY: Fukunaga

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim an income tax credit of 50% of the "qualified infrastructure costs" incurred by a qualified taxpayer in the state. Defines "qualified infrastructure costs" as the total costs incurred by a qualified infrastructure project within the state that is subject to the general excise tax or income tax and has not been financed by any investments for which a credit was or will be claimed pursuant to HRS section 235-110.9. Defines qualified infrastructure project as a construction project in the state, for the development, construction, or renovation of a film, video, television, or media production or post-production facility and the immovable property and related equipment, or any other facility that supports and is a necessary component of such infrastructure project. Stipulates that qualified infrastructure costs shall not include the cost of purchasing or leasing real property. In order to qualify for the tax credit, a qualified infrastructure project shall: (1) meet the definition of a qualified infrastructure project; (2) have qualified infrastructure costs totaling at least $10,000,000; and (3) provide evidence of reasonable efforts to hire Hawaii residents.

Credits in excess of a taxpayer's income tax liability shall be refunded provided such amount is over $1. Requires all claims for a tax credit, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the tax credit. Directs the director of taxation to prepare the necessary forms to claim a credit, may require the taxpayer to furnish information to validate a claim for credit, and adopt rules pursuant to HRS chapter 91. In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified infrastructure costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of the credit shall be determined by rule.'

If the infrastructure project ceases to be a qualified infrastructure project, the credit claimed under this section shall be recaptured and 100% of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs. The taxpayer shall consent to a tax lien in the amount of the tax credit claimed under this section on the property as a condition to receiving the tax credit.

As a prerequisite to receive the credit, the taxpayer shall first prequalify the infrastructure project for the credit by registering with the department of business, economic development, and tourism (DBEDT) during the development stage. If any portion of an infrastructure project is a facility that may be used for other purposes unrelated to production or post-production activities, then the project shall be approved only if a determination is made that the multiple-use facility will support and will be necessary to secure production or post-production activity. The taxpayer may also request a comfort ruling from the department of taxation regarding the applicability of the tax credit to a specific qualified infrastructure project.

Requires the taxpayer to submit an annual fee, equal to 1% of the tax credit received by the taxpayer, for administration of the tax credit to the DBEDT application for a qualified infrastructure project tax credit. The fee shall become first payable within 30 days of the issuance of the determination letter issued by DBEDT.

Requires every taxpayer claiming the qualified infrastructure project tax credit to submit a written, sworn statement to DBEDT, no later than 90 days following the end of each taxable year in which qualified production costs were expended, identifying: (1) all qualified infrastructure costs incurred in the previous taxable year; (2) the amount of tax credits claimed pursuant to this section in the previous taxable year; and (3) the number of total employees hired versus the number of Hawaii residents hired, by job category and by county.

Requires DBEDT to: (1) maintain records of the names of the taxpayers and qualified infrastructure projects claiming the tax credits; (2) obtain and total the aggregate amounts of all qualified infrastructure costs per qualified infrastructure project per taxable year; and (3) provide a letter to the director of taxation specifying the amount of the tax credit per qualified infrastructure project for each taxable year that a tax credit is claimed and the cumulative amount of the tax credit for all years claimed.

Upon qualification to receive the credit, DBEDT shall issue a letter to the taxpayer regarding the qualified infrastructure project, specifying the qualified infrastructure costs and the tax credit amount qualified for in each taxable year a tax credit is claimed. The taxpayer shall then file the letter with the taxpayer's tax return for the qualified infrastructure project to the department of taxation.

EFFECTIVE DATE: Tax years beginning after December 31, 2011

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state's general excise tax on goods and services used by film producers. The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production.

This measure proposes to complement the existing income tax credits to establish a motion picture, digital media, and film production infrastructure tax credit of 50% of the qualified infrastructure costs, provided such costs are at least $10 million.

It should be noted that the motion picture, digital media and film production credits have been morphing and expanding into full-blown tax credits since they "got their foot in the door" in 1997. It should be remembered that the perpetuation and expansion of the motion picture credits are a drain on the state treasury. It is incredulous how lawmakers can bemoan the fact that there are insufficient resources to catch up on the backlog of school repairs and maintenance, to fund social programs and not being able to provide tax relief to residents and yet they are willing to throw additional public resources at a subsidy of film production and media infrastructure as proposed in this measure. Taxpayers should be insulted that lawmakers can provide breaks for film productions but refuse to provide tax relief for residents, many of whom work two or three jobs just to keep a roof over their head and food on the table.

There is absolutely no rational basis for continuing these tax credits or adding a new tax credit for the same industry as proposed in this measure, other than that other states are offering similar tax credits. Then again those states can't offer paradise, year-round good weather during which to film. Instead of utilizing back door subsidies through tax credits, film industry advocates need to promote the beauty that is synonymous with Hawaii.

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. While the sponsors try to make an argument that Hawaii needs to enact such an incentive to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere. While film producers may moan that they will lose money without the proposed tax credits, is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet.

So while there may be the promise of a new industry and increased career opportunities, lawmakers must return to the cold hard reality of solving the problems at hand. The long and short of it is that due in large part to the irresponsibility of handling state finances in the past, taxpayers cannot afford proposals like this. Thanks to the gushing generosity of those lawmakers who gave the state's bank away in all sorts of tax incentive schemes in recent years, taxpayers cannot afford what looks like a promising opportunity.

More important, will lawmakers be held accountable for not reducing the burden of taxes on all families in Hawaii because they are giving away tax revenues in the form of these tax incentives. People ask why does Hawaii's tax burden have to be so high. Certainly a valid response is because lawmakers have decided to "take care" of a few at the expense of many. Taxpayers need to understand that because lawmakers are spending tax dollars out the back door on such tax incentives, such incentive amount to nothing more than a tax increase, something that has become a reality in the past few years as lawmakers have sought new taxes and fees to shore up the general fund budget gap.

Digested 2/2/12