



GOV. MSG. NO. 1189

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

May 31, 2013

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

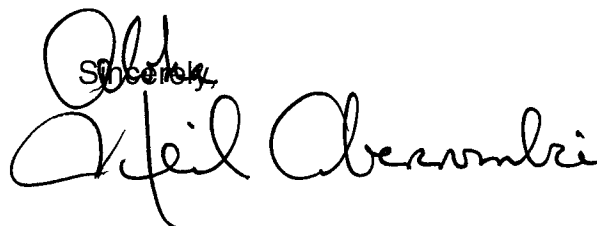
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on May 31, 2013, the following bill was signed into law:

HB726 HD1 SD2 CD1

RELATING TO FILM AND DIGITAL MEDIA
INDUSTRY DEVELOPMENT
ACT 089 (13)


Sincerely,
Neil Abercrombie

NEIL ABERCROMBIE
Governor, State of Hawaii

Approved by the Governor
on MAY 31 2013

ORIGINAL

ACT 089

HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2013
STATE OF HAWAII

H.B. NO.

726
H.D. 1
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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. The
5 legislature further finds that the motion picture, digital
6 media, and film production income tax credit should be amended
7 to enhance the existing incentives.

8 The purpose of this Act is to encourage the growth of the
9 film and creative media industries by providing enhanced
10 incentives for film and creative media production.

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

13 "**§235-17 Motion picture, digital media, and film**
14 **production income tax credit.** (a) Any law to the contrary
15 notwithstanding, there shall be allowed to each taxpayer subject
16 to the taxes imposed by this chapter, an income tax credit
17 [~~which~~] that shall be deductible from the taxpayer's net income
18 tax liability, if any, imposed by this chapter for the taxable

HB726 CD1 HMS 2013-3490-2



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

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

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

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

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

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



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

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

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

11 (c) If the tax credit under this section exceeds the
12 taxpayer's income tax liability, the excess of credits over
13 liability shall be refunded to the taxpayer; provided that no
14 refunds or payment on account of the tax credits allowed by this
15 section shall be made for amounts less than \$1. All claims,
16 including any amended claims, for tax credits under this section
17 shall be filed on or before the end of the twelfth month
18 following the close of the taxable year for which the credit may
19 be claimed. Failure to comply with the foregoing provision
20 shall constitute a waiver of the right to claim the credit.

21 (d) To qualify for this tax credit, a production shall:



- 1 (1) Meet the definition of a qualified production
2 specified in subsection (1);
- 3 (2) Have qualified production costs totaling at least
4 \$200,000;
- 5 (3) Provide the State, at a minimum, a shared-card, end-
6 title screen credit, where applicable;
- 7 (4) Provide evidence of reasonable efforts to hire local
8 talent and crew; and
- 9 (5) Provide evidence of financial or in-kind contributions
10 or educational or workforce development efforts, in
11 partnership with related local industry labor
12 organizations, educational institutions, or both,
13 toward the furtherance of the local film and
14 television and digital media industries.
- 15 (e) On or after July 1, 2006, no qualified production cost
16 that has been financed by investments for which a credit was
17 claimed by any taxpayer pursuant to section 235-110.9 is
18 eligible for credits under this section.
- 19 (f) To receive the tax credit, the taxpayer shall first
20 prequalify the production for the credit by registering with the
21 department of business, economic development, and tourism during
22 the development or preproduction stage. Failure to comply with



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

3 (g) The director of taxation shall prepare forms as may be
4 necessary to claim a credit under this section. The director
5 may also require the taxpayer to furnish information to
6 ascertain the validity of the claim for credit made under this
7 section and may adopt rules necessary to effectuate the purposes
8 of this section pursuant to chapter 91.

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

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



1 This information may be reported from the department of
2 business, economic development, and tourism to the legislature
3 in redacted form pursuant to subsection (i)(4).

4 (i) The department of business, economic development, and
5 tourism shall:

6 (1) Maintain records of the names of the taxpayers and
7 qualified productions thereof claiming the tax credits
8 under subsection (a);

9 (2) Obtain and total the aggregate amounts of all
10 qualified production costs per qualified production
11 and per qualified production per taxable year; [~~and~~]

12 (3) Provide a letter to the director of taxation
13 specifying the amount of the tax credit per qualified
14 production for each taxable year that a tax credit is
15 claimed and the cumulative amount of the tax credit
16 for all years claimed[-]; and

17 (4) Submit a report to the legislature no later than
18 twenty days prior to the convening of each regular
19 session detailing the non-aggregated qualified
20 production costs that form the basis of the tax credit
21 claims and expenditures, itemized by taxpayer, in a

1 redacted format to preserve the confidentiality of the
2 taxpayers claiming the credit.

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

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

15 (j) Total tax credits claimed per qualified production
16 shall not exceed [~~\$8,000,000.~~] \$15,000,000.

17 (k) Qualified productions shall comply with subsections
18 (d), (e), (f), and (h).

19 (l) For the purposes of this section:
20 "Commercial":

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

9 "Digital media" means production methods and platforms
10 directly related to the creation of cinematic imagery and
11 content, specifically using digital means, including but not
12 limited to digital cameras, digital sound equipment, and
13 computers, to be delivered via film, videotape, interactive game
14 platform, or other digital distribution media [~~excluding~~
15 ~~Internet-only distribution~~].

16 [~~"Post-production"~~] "Post-production" means production
17 activities and services conducted after principal photography is
18 completed, including but not limited to editing, film and video
19 transfers, duplication, transcoding, dubbing, subtitling,
20 credits, closed captioning, audio production, special effects
21 (visual and sound), graphics, and animation.



1 "Production" means a series of activities that are directly
2 related to the creation of visual and cinematic imagery to be
3 delivered via film, videotape, or digital media and to be sold,
4 distributed, or displayed as entertainment or the advertisement
5 of products for mass public consumption, including but not
6 limited to scripting, casting, set design and construction,
7 transportation, videography, photography, sound recording,
8 interactive game design, and [~~post-production.~~] post-production.

9 "Qualified production":

10 (1) Means a production, with expenditures in the State,
11 for the total or partial production of a feature-
12 length motion picture, short film, made-for-television
13 movie, commercial, music video, interactive game,
14 television series pilot, single season (up to twenty-
15 two episodes) of a television series regularly filmed
16 in the State (if the number of episodes per single
17 season exceeds twenty-two, additional episodes for the
18 same season shall constitute a separate qualified
19 production), television special, single television
20 episode that is not part of a television series
21 regularly filmed or based in the State, national
22 magazine show, or national talk show. For the



1 purposes of subsections (d) and (j), each of the
2 aforementioned qualified production categories shall
3 constitute separate, individual qualified productions;
4 and

5 (2) Does not include: [~~daily news; public~~]

6 (A) News;

7 (B) Public affairs programs; [~~non-national~~]

8 (C) Non-national magazine or talk shows; [~~televised~~]

9 (D) Televised sporting events or activities;
10 [~~productions~~]

11 (E) Productions that solicit funds; [~~productions~~]

12 (F) Productions produced primarily for industrial,
13 corporate, institutional, or other private
14 purposes; and [~~productions~~]

15 (G) Productions that include any material or
16 performance prohibited by chapter 712.

17 "Qualified production costs" means the costs incurred by a
18 qualified production within the State that are subject to the
19 general excise tax under chapter 237 or income tax under this
20 chapter and that have not been financed by any investments for
21 which a credit was or will be claimed pursuant to section



1 235-110.9. Qualified production costs include but are not
2 limited to:

- 3 (1) Costs incurred during preproduction such as location
4 scouting and related services;
- 5 (2) Costs of set construction and operations, purchases or
6 rentals of wardrobe, props, accessories, food, office
7 supplies, transportation, equipment, and related
8 services;
- 9 (3) Wages or salaries of cast, crew, and musicians;
- 10 (4) Costs of photography, sound synchronization, lighting,
11 and related services;
- 12 (5) Costs of editing, visual effects, music, other post-
13 production, and related services;
- 14 (6) Rentals and fees for use of local facilities and
15 locations[+], including rentals and fees for use of
16 state and county facilities and locations that are not
17 subject to general excise tax under chapter 237 or
18 income tax under this chapter;
- 19 (7) Rentals of vehicles and lodging for cast and crew;
- 20 (8) Airfare for flights to or from Hawaii, and interisland
21 flights;
- 22 (9) Insurance and bonding;



- 1 (10) Shipping of equipment and supplies to or from Hawaii,
- 2 and interisland shipments; and
- 3 (11) Other direct production costs specified by the
- 4 department in consultation with the department of
- 5 business, economic development, and tourism[-];
- 6 provided that any government-imposed fines, penalties, or
- 7 interest that are incurred by a qualified production within the
- 8 State shall not be "qualified production costs."

9 SECTION 3. Act 88, Session Laws of Hawaii 2006, is amended
 10 by amending section 4 to read as follows:

11 "SECTION 4. This Act shall take effect on July 1, 2006;
 12 provided that:

13 (1) Section 2 of this Act shall apply to qualified
 14 production costs incurred on or after July 1, 2006,
 15 and before January 1, [~~2016~~] 2019; and

16 (2) This Act shall be repealed on January 1, [~~2016~~] 2019,
 17 and section 235-17, Hawaii Revised Statutes, shall be
 18 reenacted in the form in which it read on the day
 19 before the effective date of this Act."

20 SECTION 4. The department of business, economic
 21 development, and tourism shall submit an annual report to the
 22 legislature no later than twenty days prior to each regular

1 session beginning with the 2014 regular session. The report
2 shall contain a cost benefit analysis of the motion picture,
3 digital media, and film production income tax credit, including
4 but not limited to the following:

5 (1) The total number of full-time, part-time, and contract
6 personnel on the payroll necessary to administer the
7 motion picture, digital media, and film production
8 income tax credit; and

9 (2) The average wage of each of the above personnel groups
10 and total earnings for the year.

11 The department of business, economic development, and
12 tourism shall report the data collected pursuant to section 235-
13 17(i)(4), Hawaii Revised Statutes. The legislature may use the
14 information to determine whether the tax credits are meeting the
15 objectives of the motion picture, digital media, and film
16 production income tax credit and this Act.

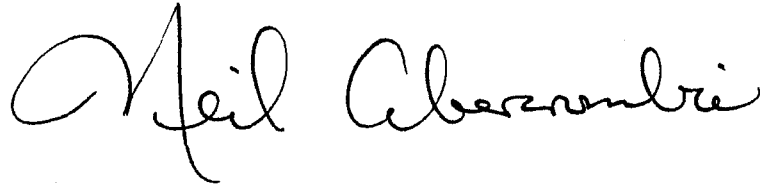
17 SECTION 5. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 6. This Act shall take effect on July 1, 2013, and
20 apply to taxable years beginning after December 31, 2012.

H.B. NO.

726
H.D. 1
S.D. 2
C.D. 1

APPROVED this 31 day of MAY, 2013.



GOVERNOR OF THE STATE OF HAWAII