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

H.B. NO. 726 H.D. 1 S.D. 2

A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

PART I

SECTION 1. The legislature finds that the film industry in Hawaii is an important component of a diversified economy and that its financial impact can be strengthened significantly if existing incentives for the industry are adjusted.

There has been a dramatic increase in the number of state and local governments attempting to attract film productions. These jurisdictions have experienced dramatic increases in in-state spending and significant growth in workforce and infrastructure development. In Hawaii, infrastructure developers have shown interest in West Oahu and neighbor islands to develop facilities. More facilities would increase production in Hawaii and would stimulate more direct and indirect tax revenue.

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

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

(2) Creates skilled, high-paying jobs;

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

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

(5) Has the potential to create jobs in construction and media industries on Oahu and the neighbor islands.

It is necessary to enhance existing tax incentive programs that use front-end budgeting methods normally used by the film industry, lower production costs to allow Hawaii to compete with other film production centers in attracting a greater number of significant projects to the State, and continue to build the State's local film industry infrastructure.

The purpose of this Act is to encourage the growth of the film and creative media industries by providing enhanced incentives for film and creative media production and new incentives for media infrastructure development that will attract more film and television productions to Hawaii and develop opportunities for locally developed productions, thereby generating increased creative media development and tax revenues.

PART II

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

1. By amending subsection (a) to read:

"(a) Any law to the contrary notwithstanding, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit [~~which~~] <u>that</u> shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be:

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

(2) [~~Twenty~~] ___________ per cent of the qualified production costs incurred by a qualified production in

any county of the State with a population of seven hundred thousand or less.

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

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified production 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 credit shall be determined by rule.

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for those costs for which the deduction is taken.

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

2. By amending subsection (j) to read:

"(j) Total tax credits claimed per qualified production shall not exceed [~~$8,000,000.~~] <u>$12,000,000.</u>"

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

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

(1) Section 2 of this Act shall apply to qualified production costs incurred on or after July 1, 2006, and before January 1, [~~2016,~~] 2023; and

(2) This Act shall be repealed on January 1, [~~2016,~~] 2023, and section 235-17, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act."

PART III

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- Media infrastructure project tax credit.** (a) In addition to the credits described in section 235-17, beginning on or after July 1, 2013, and ending prior to January 1, 2023, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, a media infrastructure project tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be equal to per cent of the qualified costs incurred for qualified media infrastructure projects situated in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000.

For the purposes of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified production 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 credit shall be determined by rule.

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

(b) The following shall apply to the qualified media infrastructure project tax credit described in subsection (a):

(1) The base investment for a qualified media infrastructure project shall be in excess of $;

(2) The qualified media infrastructure project tax credit shall be nonrefundable. The portion of the tax credit that exceeds the tax liability of the taxpayer for the tax year in which the credit was earned may be carried forward to offset net income tax liability in subsequent tax years for a period not to exceed ten taxable years or until exhausted, whichever occurs first. The director of taxation may require the tax credit to be taken in the tax period in which the credit is earned or may structure the tax credit to provide that only a portion of the tax credit be taken over the course of two or more years;

(3) The total qualified media infrastructure project tax credit allowed for any state-certified infrastructure project shall not exceed $;

(4) If all or a 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 is necessary to secure production or post production activity for the production and post production

facility and the applicant provides sufficient contractual assurances that the facility will be used as a state-of-the-art production or post production facility, or as a support and component thereof, for the useful life of the facility; provided that no tax credits described in subsection (a) shall be earned on a multiple-use facility until the production or post production facility is complete;

(5) Tax credits for qualified media infrastructure projects shall be earned only as follows:

(A) Construction of the infrastructure project shall begin within six months of the initial certification and shall be   per cent complete within a   year time frame;

(B) Expenditures shall be certified by the department of business, economic development, and tourism, and credits shall not be earned until that certification is made; and

(C) For purposes of allowing tax credits against state income tax liability, the tax credits shall be deemed earned at the time the expenditures are made; provided that all requirements of this subsection have been met and the tax credits have been certified;

(6) For state-certified infrastructure projects, an application for a qualified media infrastructure project tax credit shall be submitted to the department of business, economic development, and tourism and shall include:

(A) A detailed description of the infrastructure project;

(B) A preliminary budget;

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

(D) Estimated start and completion dates;

(E) A letter issued by the mayor and council of the county in which the infrastructure project is to be located indicating that the project has been approved; and

(F) If the application is incomplete, additional information may be requested prior to further action by the department of business, economic development, and tourism;

(7) An application fee shall be submitted with the application for a qualified media infrastructure project tax credit. The amount of the fee shall be equal to   per cent of the estimated total incentive tax credits; provided that the minimum application fee shall be $ and the maximum application fee shall be $; and

(8) Prior to any final certification of a tax credit for a state-certified infrastructure project, the applicant for the qualified media infrastructure project tax credit shall submit to the department of business, economic development, and tourism an audit of the expenditures that is performed and certified by an independent certified public accountant pursuant to rule. Upon approval of the audit, the department of business, economic development, and tourism shall issue a final tax credit certification letter indicating the amount of tax credit certified for the state-certified infrastructure project to the taxpayer and investors. Bank loan finance fees applicable to the qualified media infrastructure project expenditures, as certified by the department of

business, economic development, and tourism, and any general excise taxes that have been paid on the bank loan finance fees and remitted to the State may be included as part of the qualifying media infrastructure project expenses that qualify for the tax credit. The taxpayer for each qualified media infrastructure project shall file the letter with the taxpayer's tax return for the qualified media infrastructure project to the department of taxation. Notwithstanding the authority of the department of business, economic development, and tourism under this section, the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

(c) Any taxpayer eligible to claim a tax credit under subsection (a) shall:

(1) File an annual progress report with the department of business, economic development, and tourism on a calendar basis, which shall include the following information:

(A) Percentage of completion of each qualified media infrastructure project;

(B) Amount of moneys expended on, and amount remaining to complete, each qualified media infrastructure project; and

(C) Tax and labor clearances;

(2) Deliver to the department of business, economic development, and tourism a performance bond, in a form prescribed by the department of business, economic development, and tourism by rule, executed by a surety company authorized to do business in the State or otherwise secured in a manner satisfactory to the department of business, economic development, and tourism, in an amount equal to per cent of total projected expenditures determined upon initial certification; and

(3) Provide:

(A) Pledge of a lien on the qualified media infrastructure project in favor of the State in the amount of $; provided that the lien shall expire five years after completion of the project; or

(B) Collateral security in the amount of $; provided that the collateral security shall be released five years after completion of the qualified media infrastructure project.

(d) Any taxpayer eligible to claim a qualified media infrastructure project tax credit under subsection (a) shall file with the department of business, economic development, and tourism an annual report no later than March 1 following each taxable year for which the credit is claimed. The report shall include the following information:

(1) The amount of general excise tax paid under chapter 237;

(2) The amount of transient accommodations tax paid under chapter 237D;

(3) The amount of tax credits claimed under this section;

(4) Gross proceeds of each project;

(5) Number of full-time employees employed on each qualified media infrastructure project;

(6) Number of part-time employees employed on each qualified media infrastructure project;

(7) Number of independent contractors contracted to work on each qualified media infrastructure project;

(8) Amount disbursed as payroll in the State on each qualified media infrastructure project; and

(9) List of job classifications with average wage level.

(e) For purposes of this section:

"Base investment" means the monetary value of an investment in the development, construction, or renovation of a media infrastructure project; provided that "base investment" does not include expenditures used to pay the costs of operating a film, video, television, or media production or post production facility.

"Production" and "post production" shall have the same meaning as defined in section 235-17.

"Qualified media infrastructure project" means the development, construction, renovation, or operation of a film, video, television, or media production or post production facility and the immovable property and equipment related thereto, or any other facility that supports and is a necessary component of the proposed infrastructure project, that is located in the State; provided that the facility may include a movie theater or other commercial exhibition facility to assist in offsetting operating costs of the production or post production facility, but shall not include a facility used to produce pornographic matter or a pornographic performance.

(f) A taxpayer may claim the media infrastructure project tax credit for investments made on a qualified media infrastructure project prior to January 1, 2023; provided that:

(1) Construction of the media infrastructure project shall commence prior to January 1, 2023; and

(2) The claim for the media infrastructure project tax credit shall be properly 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 either of the foregoing provisions shall constitute a waiver of the right to claim the tax credit.

(g) If at the close of any taxable year:

(1) The qualified media infrastructure project no longer qualifies for the tax credit established under this section;

(2) The qualified media infrastructure project or an interest in the qualified media infrastructure project has been sold by the taxpayer making a base investment in the qualified media infrastructure project; or

(3) The taxpayer has withdrawn the taxpayer's base investment wholly or partially from the qualified media infrastructure project,

the tax credit claimed under this section shall be recaptured.

The recapture shall be equal to   per cent of the amount of the total tax credit claimed under this section in the preceding five taxable years. The amount of the tax credit recaptured shall apply only to the investment in the particular qualified media infrastructure project that meets the conditions of paragraph (1), (2), or (3). The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(h) Failure to complete a qualified media infrastructure project for which a tax credit is claimed under subsection (a) within five years of initial certification shall result in ineligibility to claim the tax credit.

(i) There is established a Hawaii film office special fund, to be administered by the department of taxation, into which shall be deposited all application fees collected pursuant to this section. The moneys in the special fund shall be expended for the purposes of managing infrastructure development credits and related programs."

SECTION 5. The department of taxation, in collaboration with the department of business, economic development, and tourism, shall submit an annual report to the legislature no later than twenty days prior to each regular session beginning with the 2014 regular session. The report shall contain a cost benefit analysis of the tax credit established in this part. The department of taxation shall report the data collected under this section along with a cumulative total of tax credits granted for each qualified media infrastructure project.

PART IV

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2050, and apply to taxable years beginning after December 31, 2012.

Report Title:
Film Tax Credits; Amendments; Media Infrastructure Project Tax Credit

Description:
Extends the motion picture, digital media, and film production income tax credit from 01/01/2016 to 01/01/2023. Increases the credit ceiling to $12,000,000 per qualified production. Changes the credit amount from 15% to an unspecified amount in a county with a population over 700,000, and from 20% to an unspecified amount in a county with a population of 700,000 or less. Creates a tax credit for media infrastructure projects in West Oahu or the most populous island in a county with a population of 100,000 to 175,000, from 07/01/2013 to 01/01/2023. Provides for recapture of the media infrastructure project tax credit. Establishes a special fund for management of media infrastructure project tax credits and related programs. Requires analysis and reporting by DOTAX, in collaboration with DBEDT, on the effectiveness of the media infrastructure project tax credit. Effective 07/01/2050. (SD2)

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