

JAN 18 2013

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that there is a
2 compelling state interest to:

3 (1) Establish a substantive jobs creation program to
4 promote the training and advancement of local
5 residents; and

6 (2) Increase the current motion picture, digital media,
7 and film production income tax credit.

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

10 "**§235-17 Motion picture, digital media, and film**
11 **production income tax credit[-]; work and infrastructure**
12 **incentive income tax credit; qualified persons crew training and**
13 **advancement program rebate.** (a) Any law to the contrary
14 notwithstanding, there shall be allowed to each taxpayer subject
15 to the taxes imposed by this chapter, an income tax credit which
16 shall be deductible from the taxpayer's net income tax
17 liability, if any, imposed by this chapter for the taxable year



1 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 (b) In addition to the credits described in subsection
12 (a), beginning on or after July 1, 2013, and ending prior to
13 January 1, 2018, the following credits shall apply:

14 (1) Work credit: Five per cent of the qualified
15 production costs incurred by a qualified production in
16 any county of the State; provided that the qualified
17 production films at least fifty per cent of principal
18 photography in the State or films at least nine
19 consecutive episodes of a television program in a
20 calendar year in the State; and

21 (2) Infrastructure incentive credit: Ten per cent of the
22 qualified production costs incurred by a qualified



1 production in any county of the State; provided that
2 the production qualifies for a credit under paragraph
3 (1) and:

4 (A) For a qualified production with a budget of
5 \$30,000,000 or less, the qualified production
6 shall build a set and film for a minimum of one
7 week at a qualified production facility; and

8 (B) For a qualified production with a budget of more
9 than \$30,000,000, the qualified production shall
10 build a set and film for a minimum of two weeks
11 at a qualified production facility.

12 (c) There shall be a qualified persons crew training and
13 advancement program rebate that shall be equal to fifty per cent
14 of the hourly wages of each resident participant in a qualified
15 persons crew training and advancement program, and if incurred
16 by a qualified production in any county of the State, a taxpayer
17 claiming a rebate under this section shall be reimbursed up to
18 the first nine hundred hours physically worked by the qualifying
19 crew member in a specialized craft position.

20 This program shall be supported by the application fee paid
21 by a qualified production. To qualify for a rebate under this



1 subsection, a taxpayer shall hire a minimum of five qualified
2 persons as trainees on each qualified production.

3 A trainee that participates in this program shall be
4 trained by a trainer on a qualified production, who is
5 proficient at the specialized craft position. Once a trainee
6 successfully completes the program and any applicable union
7 requirements, the trainee shall be added to the Hawaii qualified
8 crew roster, the main source for hiring resident crew.

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

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

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



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

4 ~~[(b)]~~ (e) The ~~[credit]~~ credits allowed under ~~[this~~
5 ~~section]~~ subsection (a) shall be claimed against the net income
6 tax liability for the taxable year~~[-]~~ in which the credit is
7 claimed. For the purposes of this section, "net income tax
8 liability" means net income tax liability reduced by all other
9 credits allowed under this chapter.

10 ~~[(e)]~~ (f) If the qualified production tax credit under
11 ~~[this section]~~ subsection (a) exceeds the taxpayer's income tax
12 liability, the excess of credits over liability shall be
13 refunded to the taxpayer; provided that no refunds or payment on
14 account of the tax credits allowed by this section shall be made
15 for amounts less than \$1~~[-]~~; provided further that the State
16 shall not be obligated to make payment earlier than eighteen
17 months from the date of the end of principal photography of the
18 qualified production.

19 All claims, including any amended claims, for tax credits
20 under ~~[this section]~~ subsection (a) shall be filed on or before
21 the end of the twelfth month following the close of the taxable
22 year for which the credit may be claimed. Failure to comply



1 with the foregoing provision shall constitute a waiver of the
2 right to claim the credit.

3 ~~[(d)]~~ (g) To qualify for ~~[this]~~ a tax credit~~[,]~~ under
4 subsection (a), a production shall:

- 5 (1) Meet the definition of a qualified production
6 specified in subsection ~~[(1)]~~ (o);
- 7 (2) Have qualified production costs totaling at least
8 \$200,000;
- 9 (3) Provide the State, at a minimum, a shared-card, end-
10 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)]~~ (h) 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 235-
22 110.9 is eligible for credits under this section.



1 ~~[(f)]~~ (i) To receive ~~[the]~~ a tax credit~~[r]~~ 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)]~~ (j) The director of taxation shall prepare forms as
9 may be necessary to claim a credit under this section. The
10 director may also require the taxpayer to furnish information to
11 ascertain the validity of the claim for credit made under this
12 section and may adopt rules necessary to effectuate the purposes
13 of this section pursuant to chapter 91.

14 ~~[(h)]~~ (k) Every taxpayer claiming a tax credit under ~~[this~~
15 ~~section]~~ subsection (a) for a qualified production shall, no
16 later than ninety days following the end of each taxable year in
17 which qualified production costs were expended~~[, submit]~~:

18 (1) Submit a written, sworn statement to the department of
19 business, economic development, and tourism,
20 identifying:



- 1 ~~[(1)]~~ (A) All qualified production costs as provided by
2 subsection (a), if any, incurred in the previous
3 taxable year;
- 4 ~~[(2)]~~ (B) The amount of tax credits claimed pursuant to
5 this section, if any, in the previous taxable
6 year; and
- 7 ~~[(3)]~~ (C) The number of total hires versus the number of
8 local hires by category (i.e., department) and by
9 county~~[-]~~; and
- 10 (2) Pay an application fee in the amount equal to:
- 11 (A) One-half of one per cent of the qualified
12 production costs; or
- 13 (B) \$75,000;
- 14 whichever is less; provided that any deposited amount
15 that is made pursuant to this subsection shall be
16 returned if the production does not qualify for the
17 tax credit. These funds shall be administered by the
18 department of business, economic development, and
19 tourism for the purposes of supporting the qualified
20 persons crew training and advancement program rebate
21 and administration of the State's film commission.



1 ~~(i)~~ (1) The department of business, economic
2 development, and tourism shall:

3 (1) Maintain records of the names of the taxpayers and
4 qualified productions thereof claiming the tax credits
5 under subsection (a);

6 (2) Obtain and total the aggregate amounts of all
7 qualified production costs per qualified production
8 and per qualified production per taxable year; and

9 (3) Provide a letter to the director of taxation
10 specifying the amount of the tax credit per qualified
11 production for each taxable year that a tax credit is
12 claimed and the cumulative amount of the tax credit
13 for all years claimed.

14 Upon each determination required under this subsection, the
15 department of business, economic development, and tourism shall
16 issue a letter to the taxpayer, regarding the qualified
17 production, specifying the qualified production costs and the
18 tax credit amount qualified for in each taxable year a tax
19 credit is claimed. The taxpayer for each qualified production
20 shall file the letter with the taxpayer's tax return for the
21 qualified production to the department of taxation.

22 Notwithstanding the authority of the department of business,



1 economic development, and tourism under this section, the
2 director of taxation may audit and adjust the tax credit amount
3 to conform to the information filed by the taxpayer.

4 ~~[(j)]~~ (m) Total tax credits claimed per qualified
5 production shall not exceed [~~\$8,000,000.~~] \$25,000,000.

6 ~~[(k)]~~ (n) Qualified productions shall comply with
7 subsections [~~(d), (e), (f), and (h).~~] (g), (h), (i), and (k).

8 ~~[(l)]~~ (o) For the purposes of this section:

9 "Commercial":

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

18 "Digital media" means production methods and platforms
19 directly related to the creation of cinematic imagery and
20 content, specifically using digital means, including but not
21 limited to digital cameras, digital sound equipment, and
22 computers, to be delivered via film, videotape, interactive game



1 platform, or other digital distribution media (excluding
2 Internet-only distribution).

3 "Post production" means production activities and services
4 conducted after principal photography is completed, including
5 but not limited to editing, film and video transfers,
6 duplication, transcoding, dubbing, subtitling, credits, closed
7 captioning, audio production, special effects (visual and
8 sound), graphics, and animation.

9 "Production" means a series of activities that are directly
10 related to the creation of visual and cinematic imagery to be
11 delivered via film, videotape, or digital media and to be sold,
12 distributed, or displayed as entertainment or the advertisement
13 of products for mass public consumption, including but not
14 limited to pre-production related activities, scripting,
15 casting, set design and construction, transportation,
16 videography, photography, sound recording, interactive game
17 design, and post production.

18 "Qualified person" means a person who has been domiciled
19 and has filed a resident income tax return in the State for at
20 least the preceding two years and resides in the State for at
21 least six months per year.



1 "Qualified person crew training and advancement program"
2 means the development and operation of a training program for
3 state job creation with a focus on film, video, television, and
4 digital media production or post production, with a budget of
5 \$1,000,000 or greater. Commercials or other short form formats
6 that have a shooting schedule of less than eighteen days shall
7 be exempt from the requirement to hire five qualified persons
8 from this program.

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
15 twenty-two episodes) of a television or reality
16 television series regularly filmed in the State (if
17 the number of episodes per single season exceeds
18 twenty-two, additional episodes for the same season
19 shall constitute a separate qualified production),
20 television special, single television episode that is
21 not part of a television series regularly filmed or
22 based in the State, national magazine show, or



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

- 5 (2) Does not include: daily news; public affairs
6 programs; non-national magazine or talk shows;
7 televised sporting events or activities; productions
8 that solicit funds; productions produced primarily for
9 industrial, corporate, institutional, or other private
10 purposes; and productions that include any material or
11 performance prohibited by chapter 712.

12 "Qualified production costs" means the costs incurred by a
13 qualified production within the State that are subject to the
14 general excise tax under chapter 237 or income tax under this
15 chapter and that have not been financed by any investments for
16 which a credit was or will be claimed pursuant to section
17 235-110.9. Qualified production costs include but are not
18 limited to:

- 19 (1) Costs incurred during preproduction such as location
20 scouting and related services;

- 21 (2) Costs of set construction and operations, purchases or
22 rentals of wardrobe, props, accessories, food, office



1 supplies, transportation, equipment, and related
2 services[+] that are not available in the State;
3 provided that the services shall be qualified only if
4 they are obtained through an existing resident vendor
5 that provides similar services, and a mark-up and
6 general excise tax are paid upon the services;

7 (3) Wages or salaries of [~~cast, crew,~~]:

8 (A) Above-the-line crew (cast, directors, producers,
9 and writers) and musicians;

10 (B) Below-the-line resident crew; and

11 (C) Below-the-line nonresident crew; provided that a
12 waiver is granted by the applicable local union
13 or guild and certified by the Hawaii film office;
14 provided further that a waiver shall be issued
15 when a resident crew from the Hawaii qualified
16 crew roster prepared by the local unions, guilds,
17 and the Hawaii film office is not available or
18 proficient at a specialized craft position;

19 (4) Costs of photography, sound synchronization, lighting,
20 and related services;

21 (5) Costs of editing, visual effects, music, other post-
22 production, and related services;



- 1 (6) Rentals and fees for use of local facilities and ✓
2 locations;
- 3 (7) Rentals of vehicles and lodging for cast and crew;
- 4 (8) Airfare for flights to or from Hawaii, and interisland
5 flights;
- 6 (9) Insurance and bonding;
- 7 (10) Shipping of equipment and supplies to or from Hawaii,
8 and interisland shipments; and
- 9 (11) Other direct production costs specified by the
10 department in consultation with the department of
11 business, economic development, and tourism.

12 "Qualified production facility" means:

- 13 (1) A sound stage, built after July 1, 2013, with
14 development costs of at least \$10,000,000; or
- 15 (2) An existing sound stage, warehouse, or other building
16 structure that has been renovated after July 1, 2013,
17 with capital improvement costs equal to at least
18 \$10,000,000;

19 for the purpose of renting production or filming space to
20 qualified productions. The taxpayer shall provide reasonable
21 evidence to verify that the development or capital improvement



1 costs incurred for the facility satisfy the threshold amounts
2 set forth above."

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

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

7 (1) Section 2 of this Act shall apply to qualified
8 production costs incurred on or after July 1, 2006,
9 and before January 1, [~~2016~~] 2018; and

10 (2) This Act shall be repealed on January 1, [~~2016~~] 2018,
11 and section 235-17, Hawaii Revised Statutes, shall be
12 reenacted in the form in which it read on the day
13 before the effective date of this Act."

14 SECTION 4. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect on July 1, 2013;
17 provided that:

18 (1) Section 2 shall apply to taxable years beginning after
19 December 31, 2012; and

20 (2) This Act shall be repealed on January 1, 2018.

21

INTRODUCED BY: *James Meriwether K.*



Report Title:

Motion Picture, Digital Media, and Film Production Income Tax Credit

Description:

Amends the motion picture, digital media, and film production income tax credit by (1) adding additional work and infrastructure incentive credits; (2) establishing a qualified persons crew training and advancement program rebate; (3) requiring the payment of a fee to apply for the tax credit; (4) increasing the cap amount of the tax credit; and (5) requiring that a waiver be granted to include the wages of nonresident crew in qualified production costs. Sunset 01/01/2018.

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