
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

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

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

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



- 1 (1) Infuses significant amounts of new money into the
- 2 economy, which are dispersed across many communities
- 3 and businesses and which benefit a wide array of
- 4 residents;
- 5 (2) Creates skilled, high-paying jobs;
- 6 (3) Has a natural dynamic synergy with Hawaii's top
- 7 industry, tourism, and is used as a destination
- 8 marketing tool for the visitor industry;
- 9 (4) Is a clean, nonpolluting industry that values the
- 10 natural beauty of Hawaii and its diverse multicultural
- 11 population and wide array of architecture; and
- 12 (5) Has the potential to create jobs in construction and
- 13 media industries on Oahu and the neighbor islands.

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

20 The purpose of this Act is to encourage the growth of the
21 film and creative media industries by providing enhanced
22 incentives for infrastructure development that attract more film



1 and television productions to Hawaii and grow opportunities for
2 locally developed productions, thereby generating increased
3 creative media development and tax revenues.

4 **PART II**

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

7 "**§235-17 Motion picture, digital media, and film**
8 **production income tax credit.** (a) Any law to the contrary
9 notwithstanding, there shall be allowed to each taxpayer subject
10 to the taxes imposed by this chapter, an income tax credit which
11 shall be deductible from the taxpayer's net income tax
12 liability, if any, imposed by this chapter for the taxable year
13 in which the credit is properly claimed. The amount of the
14 credit shall be:

- 15 (1) [~~Fifteen~~] Twenty per cent of the qualified production
16 costs incurred by a qualified production in any county
17 of the State with a population of over seven hundred
18 thousand; or
- 19 (2) [~~Twenty~~] Twenty-five per cent of the qualified
20 production costs incurred by a qualified production in
21 any county of the State with a population of seven
22 hundred thousand or less.



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

5 In the case of a partnership, S corporation, estate, or
6 trust, the tax credit allowable is for qualified production
7 costs incurred by the entity for the taxable year. The cost
8 upon which the tax credit is computed shall be determined at the
9 entity level. Distribution and share of credit shall be
10 determined by rule.

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

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

18 (b) The credit allowed under this section shall be claimed
19 against the net income tax liability for the taxable year. For
20 the purposes of this section, "net income tax liability" means
21 net income tax liability reduced by all other credits allowed
22 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 production shall:

- 12 (1) Meet the definition of a qualified production
13 specified in subsection [~~(l)~~] (k);
- 14 (2) Have qualified production costs totaling at least
15 \$200,000;
- 16 (3) Provide the State, at a minimum, a shared-card, end-
17 title screen credit, where applicable;
- 18 (4) Provide evidence of reasonable efforts to hire local
19 talent and crew; and
- 20 (5) Provide evidence of financial or in-kind contributions
21 or educational or workforce development efforts, in
22 partnership with related local industry labor



1 organizations, educational institutions, or both,
2 toward the furtherance of the local film and
3 television and digital media industries.

4 (e) On or after July 1, 2006, no qualified production cost
5 that has been financed by investments for which a credit was
6 claimed by any taxpayer pursuant to section 235-110.9 is
7 eligible for credits under this section.

8 (f) To receive the tax credit, the taxpayer shall first
9 prequalify the production for the credit by registering with the
10 department of business, economic development, and tourism during
11 the development or preproduction stage. Failure to comply with
12 this provision may constitute a waiver of the right to claim the
13 credit.

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

20 (h) Every taxpayer claiming a tax credit under this
21 section for a qualified production shall, no later than ninety
22 days following the end of each taxable year in which qualified



1 production costs were expended, submit a written, sworn
2 statement to the department of business, economic development,
3 and tourism, identifying:

- 4 (1) All qualified production costs as provided by
5 subsection (a), if any, incurred in the previous
6 taxable year;
- 7 (2) The amount of tax credits claimed pursuant to this
8 section, if any, in the previous taxable year; and
- 9 (3) The number of total hires versus the number of local
10 hires by category (i.e., department) and by county.

11 There is established a Hawaii film office special fund into
12 which shall be deposited all application fees collected pursuant
13 to this section. The funds in the special fund shall be
14 expended to for the purposes of managing infrastructure
15 development credits and related programs.

16 (i) The department of business, economic development, and
17 tourism shall:

- 18 (1) Maintain records of the names of the taxpayers and
19 qualified productions thereof claiming the tax credits
20 under subsection (a);



- 1 (2) Obtain and total the aggregate amounts of all
2 qualified production costs per qualified production
3 and per qualified production 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 production for each taxable year that a tax credit is
7 claimed and the cumulative amount of the tax credit
8 for all years claimed.

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

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



1 ~~(k)~~ (j) Qualified productions shall comply with
2 subsections (d), (e), (f), and (h).

3 ~~(l)~~ (k) For the purposes of this section:

4 "Commercial":

5 (1) Means an advertising message that is filmed using
6 film, videotape, or digital media, for dissemination
7 via television broadcast or theatrical distribution;

8 (2) Includes a series of advertising messages if all parts
9 are produced at the same time over the course of six
10 consecutive weeks; and

11 (3) Does not include an advertising message with Internet-
12 only distribution.

13 "Digital media" means production methods and platforms
14 directly related to the creation of cinematic imagery and
15 content, specifically using digital means, including but not
16 limited to digital cameras, digital sound equipment, and
17 computers, to be delivered via film, videotape, interactive game
18 platform, or other digital distribution media (excluding
19 Internet-only distribution).

20 "Post production" means production activities and services
21 conducted after principal photography is completed, including
22 but not limited to editing, film and video transfers,



1 duplication, transcoding, dubbing, subtitling, credits, closed
2 captioning, audio production, special effects (visual and
3 sound), graphics, and animation.

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

12 "Qualified production":

13 (1) Means a production, with expenditures in the State,
14 for the total or partial production of a feature-
15 length motion picture, short film, made-for-television
16 movie, commercial, music video, interactive game,
17 television series pilot, single season (up to twenty-
18 two episodes) of a television series regularly filmed
19 in the State (if the number of episodes per single
20 season exceeds twenty-two, additional episodes for the
21 same season shall constitute a separate qualified
22 production), television special, single television



1 episode that is not part of a television series
2 regularly filmed or based in the State, national
3 magazine show, or national talk show. For the
4 purposes of [~~subsections~~] subsection (d) [~~and (j)~~],
5 each of the aforementioned qualified production
6 categories shall constitute separate, individual
7 qualified productions; and

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

15 "Qualified production costs" means the costs incurred by a
16 qualified production within the State that are subject to the
17 general excise tax under chapter 237 or income tax under this
18 chapter and that have not been financed by any investments for
19 which a credit was or will be claimed pursuant to section
20 235-110.9. Qualified production costs include but are not
21 limited to:



- 1 (1) Costs incurred during preproduction such as location
2 scouting and related services;
- 3 (2) Costs of set construction and operations, purchases or
4 rentals of wardrobe, props, accessories, food, office
5 supplies, transportation, equipment, and related
6 services;
- 7 (3) Wages or salaries of cast, crew, and musicians;
- 8 (4) Costs of photography, sound synchronization, lighting,
9 and related services;
- 10 (5) Costs of editing, visual effects, music, other post-
11 production, and related services;
- 12 (6) Rentals and fees for use of local facilities and
13 locations;
- 14 (7) Rentals of vehicles and lodging for cast and crew;
- 15 (8) Airfare for flights to or from Hawaii, and interisland
16 flights;
- 17 (9) Insurance and bonding;
- 18 (10) Shipping of equipment and supplies to or from Hawaii,
19 and interisland shipments; and
- 20 (11) Other direct production costs specified by the
21 department in consultation with the department of
22 business, economic development, and tourism."



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

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

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

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

12 PART III

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

16 "§235- Media infrastructure project tax credit. (a) In
17 addition to the credits described in section 235-17, beginning
18 on or after July 1, 2013, and ending prior to January 1, 2016,
19 there shall be allowed to each taxpayer subject to the taxes
20 imposed by this chapter, a media infrastructure project tax
21 credit that shall be deductible from the taxpayer's net income
22 tax liability, if any, imposed by this chapter for the taxable



1 year in which the credit is properly claimed. The amount of the
2 credit shall be equal to twenty-five per cent of the qualified
3 costs incurred for qualified media infrastructure projects
4 situated in West Oahu or on the most populous island in a county
5 with a population between 100,000 and 175,000.

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

8 (1) The base investment for a qualified media
9 infrastructure project shall be in excess of
10 \$ _____ ;

11 (2) The qualified media infrastructure project tax credit
12 shall be non-refundable. The portion of the tax
13 credit that exceeds the tax liability of the taxpayer
14 for the tax year in which the credit was earned may be
15 carried forward to offset net income tax liability in
16 subsequent tax years for a period not to exceed ten
17 taxable years or until exhausted, whichever occurs
18 first. The director of taxation may require the tax
19 credit to be taken in the tax period in which the
20 credit is earned or may structure the tax credit in
21 the initial certification of the project to provide



1 that only a portion of the tax credit be taken over
2 the course of two or more years;

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

6 (4) If all or a portion of an infrastructure project is a
7 facility that may be used for other purposes unrelated
8 to production or post production activities, then the
9 project shall be approved only if a determination is
10 made that the multiple use facility will support and
11 will be necessary to secure production or post
12 production activity for the production and post
13 production facility and the applicant provides
14 sufficient contractual assurances that the facility
15 will be used as a state-of-the-art production or post
16 production facility, or as a support and component
17 thereof, for the useful life of the facility; provided
18 that no tax credits described in subsection (a) shall
19 be earned on a multiple use facility until the
20 production or post production facility is complete;

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



- 1 (A) Construction of the infrastructure project shall
- 2 begin within six months of the initial
- 3 certification and shall be per cent
- 4 complete within a year time frame;
- 5 (B) Expenditures shall be certified by the director
- 6 of taxation, and credits shall not be earned
- 7 until that certification is made; and
- 8 (C) For purposes of allowing tax credits against
- 9 state income tax liability, the tax credits shall
- 10 be deemed earned at the time the expenditures are
- 11 made; provided that all requirements of this
- 12 subsection have been met and the tax credits have
- 13 been certified;
- 14 (6) For state-certified infrastructure projects, the
- 15 application for a qualified media infrastructure
- 16 project tax credit shall include:
- 17 (A) A detailed description of the infrastructure
- 18 project;
- 19 (B) A preliminary budget;
- 20 (C) A complete detailed business plan and market
- 21 analysis;
- 22 (D) Estimated start and completion dates;



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

5 (F) If the application is incomplete, additional
6 information may be requested prior to further
7 action by the director of taxation;

8 (7) An application fee shall be submitted with the
9 application for a qualified media infrastructure
10 project tax credit based on the following:

11 (A) _____ per cent multiplied by the estimated total
12 incentive tax credits; and

13 (B) The minimum application fee shall be \$ _____
14 and the maximum application fee shall be
15 \$ _____ ; and

16 (8) Prior to any final certification of a tax credit for a
17 state-certified infrastructure project, the applicant
18 for the qualified media infrastructure project tax
19 credit shall submit to the director of taxation an
20 audit of the expenditures that is performed and
21 certified by an independent certified public
22 accountant pursuant to rule. Upon approval of the



1 audit, the director of taxation shall issue a final
2 tax credit certification letter indicating the amount
3 of tax credits certified for the state-certified
4 infrastructure project to the investors. Bank loan
5 finance fees applicable to the qualified media
6 infrastructure project expenditures, as certified by
7 the director of taxation, and any general excise taxes
8 that have been paid on the bank loan finance fees and
9 remitted to the State may be included as part of the
10 tax credit.

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

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

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

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

22 (C) Tax and labor clearances;



1 (2) Deliver to the department of business, economic
2 development, and tourism a performance bond in a form
3 prescribed by the department of business, economic
4 development, and tourism by rule, executed by a surety
5 company authorized to do business in this State or
6 otherwise secured in a manner satisfactory to the
7 department of business, economic development, and
8 tourism, in an amount equal to one hundred per cent of
9 total projected expenditures determined upon initial
10 certification; and

11 (3) Provide either of the following:
12 (A) Pledge of a lien on the qualified media
13 infrastructure project in favor of the State in
14 the amount of \$ _____ ; provided that the lien
15 shall expire five years after completion of the
16 project; or
17 (B) Collateral security in the amount of \$ _____ ;
18 provided that the collateral security shall be
19 released five years after completion of the
20 qualified media infrastructure project.

21 (d) Any taxpayer eligible to claim a qualified media
22 infrastructure project tax credit under subsection (a) shall

1 file with the department of business, economic development, and
2 tourism an annual report no later than March 1 following each
3 taxable year for which the credit is claimed. The report shall
4 include the following information:

- 5 (1) The amount of general excise tax paid under chapter
6 237;
- 7 (2) The amount of transient accommodations tax paid under
8 chapter 237D;
- 9 (3) The amount of tax credits claimed under this section;
- 10 (4) Gross proceeds of each project;
- 11 (5) Number of full-time employees employed on each
12 qualified media infrastructure project;
- 13 (6) Number of part-time employees employed on each
14 qualified media infrastructure project;
- 15 (7) Number of independent contractors contracted to work
16 on each qualified media infrastructure project;
- 17 (8) Amount disbursed as payroll in the State on each
18 qualified media infrastructure project; and
- 19 (9) List of job classifications with average wage level.
- 20 (e) For purposes of this section:
- 21 "Qualified media infrastructure project" means the
22 development, construction, renovation, or operation of a film,



1 video, television, or media production or post-production
2 facility and the immovable property and equipment related
3 thereto, or any other facility that supports and is a necessary
4 component of the proposed infrastructure project, that is
5 located in the State; provided that the facility may include a
6 movie theater or other commercial exhibition facility to assist
7 in offsetting operating costs of the production or
8 postproduction facility, but shall not include a facility used
9 to produce pornographic matter or a pornographic performance.

10 (f) A taxpayer shall not be prohibited from claiming the
11 media infrastructure project tax credit for qualifying
12 investments made prior to the reenactment of section 235-17
13 pursuant to section 4 of Act 88, Session Laws of Hawaii 2006.

14 A taxpayer may claim the media infrastructure project tax
15 credit for investments made on a qualified media infrastructure
16 project prior to January 1, 2016; provided that:

17 (1) Construction of the media infrastructure project shall
18 commence prior to January 1, 2016; and

19 (2) The claim for the media infrastructure project tax
20 credit shall be properly filed on or before the end of
21 the twelfth month following the close of the taxable
22 year for which the tax credit may be claimed.



1 Failure to comply with either of the foregoing provisions shall
2 constitute a waiver of the right to claim the tax credit.

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

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

7 (2) The qualified digital media infrastructure project or
8 an interest in the qualified digital media
9 infrastructure project has been sold by the taxpayer
10 making a base investment in the qualified digital
11 media infrastructure project; or

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

15 the tax credit claimed under this section shall be recaptured.

16 The recapture shall be equal to ninety per cent of the
17 amount of the total tax credit claimed under this section in the
18 preceding five taxable years. The amount of the tax credit
19 recaptured shall apply only to the investment in the particular
20 qualified digital media infrastructure project that meets the
21 conditions of paragraph (1), (2), or (3). The amount of the
22 recaptured tax credit determined under this subsection shall be



1 added to the taxpayer's tax liability for the taxable year in
2 which the recapture occurs under this subsection.

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

7 **PART IV**

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act, upon its approval, shall apply to
11 taxable years beginning after December 31, 2012.

12



Report Title:

Film Tax Credits; Amendments; Digital Media Infrastructure Tax Credit

Description:

Extends the motion picture, digital media, and film production income tax credit from 01/01/2016 to 01/01/2023. Repeals the credit ceiling per qualified production. Increases in the credit amount from 15% to 20% in a county with a population over 700,000, and from 20% to 25% in a county with a population of 700,000 or less. Creates a tax credit for qualified digital media infrastructure projects in West Oahu or the most populous island in a county with a population of 100,000 to 150,000, from 7/1/13 to 1/1/16. Requires analysis and reporting by the Department of Business, Economic Development, and Tourism on the effectiveness of the qualified digital media infrastructure tax credit. Provides for recapture of the digital media infrastructure tax credits. (SD1)

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