
A BILL FOR AN ACT

RELATING TO DIGITAL MEDIA INFRASTRUCTURE.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235- Media infrastructure project tax credit. (a) In
5 addition to the credits described in section 235-17, beginning
6 on or after July 1, 2013, and ending prior to January 1, 2016,
7 there shall be allowed to each taxpayer subject to the taxes
8 imposed by this chapter, a media infrastructure project tax
9 credit that shall be deductible from the taxpayer's net income
10 tax liability, if any, imposed by this chapter for the taxable
11 year in which the credit is properly claimed. The amount of the
12 credit shall be equal to twenty-five per cent of the qualified
13 costs incurred for qualified media infrastructure projects
14 situated in West Oahu or on the most populous island in a county
15 with a population between 100,000 and 175,000.

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



- 1 (1) The base investment for a qualified media
2 infrastructure project shall be in excess of
3 \$ _____ ;
- 4 (2) The qualified media infrastructure project tax credit
5 shall be non-refundable. The portion of the tax
6 credit that exceeds the tax liability of the taxpayer
7 for the tax year in which the credit was earned may be
8 carried forward to offset net income tax liability in
9 subsequent tax years for a period not to exceed ten
10 taxable years or until exhausted, whichever occurs
11 first. The director of taxation may require the tax
12 credit to be taken in the tax period in which the
13 credit is earned or may structure the tax credit in
14 the initial certification of the project to provide
15 that only a portion of the tax credit be taken over
16 the course of two or more years;
- 17 (3) The total qualified media infrastructure project tax
18 credit allowed for any state-certified infrastructure
19 project shall not exceed \$ _____ ;
- 20 (4) If all or a portion of an infrastructure project is a
21 facility that may be used for other purposes unrelated
22 to production or post production activities, then the



1 project shall be approved only if a determination is
2 made that the multiple use facility will support and
3 will be necessary to secure production or post
4 production activity for the production and post
5 production facility and the applicant provides
6 sufficient contractual assurances that the facility
7 will be used as a state-of-the-art production or post
8 production facility, or as a support and component
9 thereof, for the useful life of the facility; provided
10 that no tax credits described in subsection (a) shall
11 be earned on a multiple use facility until the
12 production or post production facility is complete;
13 (5) Tax credits for qualified media infrastructure
14 projects shall be earned only as follows:
15 (A) Construction of the infrastructure project shall
16 begin within six months of the initial
17 certification and shall be _____ per cent
18 complete within a _____ year time frame;
19 (B) Expenditures shall be certified by the director
20 of taxation, and credits shall not be earned
21 until that certification is made; and



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

7 (6) For state-certified infrastructure projects, the
8 application for a qualified media infrastructure
9 project tax credit shall include:

10 (A) A detailed description of the infrastructure
11 project;

12 (B) A preliminary budget;

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

15 (D) Estimated start and completion dates;

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

20 (F) If the application is incomplete, additional
21 information may be requested prior to further
22 action by the director of taxation;



- 1 (7) An application fee shall be submitted with the
2 application for a qualified media infrastructure
3 project tax credit based on the following:
- 4 (A) _____ per cent multiplied by the estimated total
5 incentive tax credits; and
- 6 (B) The minimum application fee shall be \$
7 and the maximum application fee shall be
8 \$ _____ ; and
- 9 (8) Prior to any final certification of a tax credit for a
10 state-certified infrastructure project, the applicant
11 for the qualified media infrastructure project tax
12 credit shall submit to the director of taxation an
13 audit of the expenditures that is performed and
14 certified by an independent certified public
15 accountant pursuant to rule. Upon approval of the
16 audit, the director of taxation shall issue a final
17 tax credit certification letter indicating the amount
18 of tax credits certified for the state-certified
19 infrastructure project to the investors. Bank loan
20 finance fees applicable to the qualified media
21 infrastructure project expenditures, as certified by
22 the director of taxation, and any general excise taxes



1 that have been paid on the bank loan finance fees and
2 remitted to the State may be included as part of the
3 tax credit.

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

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

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

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

15 (C) Tax and labor clearances;

16 (2) Deliver to the department of business, economic
17 development, and tourism a performance bond in a form
18 prescribed by the department of business, economic
19 development, and tourism by rule, executed by a surety
20 company authorized to do business in this State or
21 otherwise secured in a manner satisfactory to the
22 department of business, economic development, and



1 tourism, in an amount equal to one hundred per cent of
2 total projected expenditures determined upon initial
3 certification; and

4 (3) Provide either of the following:

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

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

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

20 (1) The amount of general excise tax paid under chapter
21 237;



- 1 (2) The amount of transient accommodations tax paid under
- 2 chapter 237D;
- 3 (3) The amount of tax credits claimed under this section;
- 4 (4) Gross proceeds of each project;
- 5 (5) Number of full-time employees employed on each
- 6 qualified media infrastructure project;
- 7 (6) Number of part-time employees employed on each
- 8 qualified media infrastructure project;
- 9 (7) Number of independent contractors contracted to work
- 10 on each qualified media infrastructure project;
- 11 (8) Amount disbursed as payroll in the State on each
- 12 qualified media infrastructure project; and
- 13 (9) List of job classifications with average wage level.
- 14 (e) For purposes of this section:
- 15 "Qualified media infrastructure project" means the
- 16 development, construction, renovation, or operation of a film,
- 17 video, television, or media production or post-production
- 18 facility and the immovable property and equipment related
- 19 thereto, or any other facility that supports and is a necessary
- 20 component of the proposed infrastructure project, that is
- 21 located in the State; provided that the facility may include a
- 22 movie theater or other commercial exhibition facility to assist



1 in offsetting operating costs of the production or
2 postproduction facility, but shall not include a facility used
3 to produce pornographic matter or a pornographic performance.

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

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

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

13 (2) The claim for the media infrastructure project tax
14 credit shall be properly filed on or before the end of
15 the twelfth month following the close of the taxable
16 year for which the tax credit may be claimed.

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

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

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



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

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

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

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

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



1 SECTION 2. New statutory material is underscored.

2 SECTION 3. This Act, upon its approval, shall apply to
3 taxable years beginning after December 31, 2012.

4



Report Title:

Media Infrastructure Project Tax Credit

Description:

Establishes a media infrastructure tax credit for qualified media infrastructure projects in West Oahu or on the most populous island in a county with a population between 100,000 and 150,000. Provides for recapture of the media infrastructure tax credit in certain circumstances. (SD1)

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