SB463

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.

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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Economic Development, Government Operations and Housing

The Honorable Glen Wakai, Chair
and Members of the Senate Committee on Technology and the Arts

Date: Friday, February 8, 2013
Time: 3:15 p.m.
Place: Conference Room 016, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. 463 Relating to Digital Media Industry Development

The Department of Taxation (Department) defers to the Department of Business Economic (DBEDT) on the merits of S.B. 463 and the Department of Budget and Finance on the revenue impact of this bill on the State's financial plan.

S.B. 463 increases in the motion picture, digital media, and film production tax credit amount from 15% to 20% of the qualified production costs incurred in a county with a population over 700,000, and from 20% to 25% of the qualified production costs incurred in a county with a population of 700,000 or less, repeals the credit ceiling of $8 million per qualified production, and extends the sunset date of Act 88, Session Laws of Hawaii 2006, from January 1, 2016 to January 1, 2023.

Thank you for the opportunity to provide comments.

L E G I S L A T I V E

TAXBILLSERVICE

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SUBJECT: INCOME, Extend and increase motion picture, digital media and film production credit

BILL NUMBER: SB 463

INTRODUCED BY: Ige

BRIEF SUMMARY: Amends HRS section 235-17 to increase the motion picture, digital media, and film production tax credit from 15% to 20% for the costs incurred in a county with a population over 700,000 for qualified production costs incurred by a qualified production company; and from 20% to 25% for costs incurred in a county with a population of 700,000 or less.

Repeals the provision limiting the total tax credits that may be claimed per qualified production to $8 million.

Amends Act 88, SLH 2006, to extend the motion picture, digital media and film production credit from December 31, 2015 to December 1, 2022.

This act shall be applicable to qualified productions new to Hawaii that have commenced principal photography on or after January 1, 2013.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state's general excise tax on goods and services used by film producers. The exclusion of income received from royalties was initially established by Act 178, SLH 1999, as an incentive to attract high technology businesses to Hawaii. The original proposal would have applied to royalties and other income received from high technology businesses. This section of the law was later amended in 2000 by Act 297 which added the inclusion of royalties from "performing arts products" and again amended by Act 221, SLH 2001, to include authors of "performing arts products."

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production.

This measure proposes to increase the credit from15% 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. The measure also repeals the $8 million limit of tax credits that may be claimed per qualified production and extends the motion picture, digital media and film production credits from December 31, 2015 to December 31, 2022.

These credits have been morphing and expanding into full-blown tax credits since they "got their foot in the door" in 1997. It should be remembered that the perpetuation and expansion of motion picture credits are a drain on the state treasury. It is incredulous how lawmakers can bemoan the fact that there are insufficient resources to catch up on the backlog of school repairs and maintenance, to fund social programs and not being able to provide tax relief to residents and yet they are willing to throw additional public resources at a subsidy of film production and media infrastructure as proposed in this measure. Taxpayers should be insulted that lawmakers can provide breaks for film productions but refuse to provide tax relief for residents, many of whom work two or three jobs just to keep a roof over their head and food on the table.

There is absolutely no rational basis for increasing and continuing these tax credits other than that other states are offering similar tax credits. Then again, those states can't offer paradise, year-round good weather during which to film, spam musubi, and plate lunches with two scoops rice. Instead of utilizing back door subsidies through tax credits, film industry advocates need to promote the beauty that is synonymous with Hawaii.

Income tax credits are designed to reduce the tax burden by providing relief for taxes paid. Tax credits are justified on the basis that taxpayers with a lesser ability to pay should be granted relief for state taxes imposed. Sponsors try to make an argument that Hawaii needs to enact such incentives to compete for this type of business, one has to ask "at what price?" Promoters of the film industry obviously don't give much credit to Hawaii's natural beauty and more recently its relative security. Just ask the actors of "Lost" or "Hawaii 5-0" who have bought homes here if they would like to work elsewhere.

While film producers may moan that they will lose money without the proposed tax credits, is there any offer to share the wealth when a film makes millions of dollars? If promoters of the film industry would just do their job in outlining the advantages of doing this type of work in Hawaii and address some of the costly barriers by correcting them, such tax incentives would not be necessary. From permitting to skilled labor to facilitating transportation of equipment, there are ways that could reduce the cost of filming in Hawaii. Unless these intrinsic elements are addressed, movie makers will probably demand subsidies, such as this incentive. Unfortunately, they come at the expense of all taxpayers and industries struggling to survive in Hawaii. While lawmakers look like a ship of fools, movie producers and promoters are laughing all the way to the bank and the real losers in this scenario are the poor taxpayers who continue to struggle to make ends meet, a scenario akin to the bread and circus of ancient Rome.

So while there may be the promise of a new industry and increased career opportunities, lawmakers must return to the cold hard reality of solving the problems at hand. The long and short of it is that due in large part to the irresponsibility of handling state finances in the past, taxpayers cannot afford proposals like this. Thanks to the gushing generosity of those lawmakers who gave the state's bank away in all sorts of tax incentive schemes in recent years, taxpayers have had to bear increasing tax burdens.

Instead of creating sustainable economic development incentives, the film tax credits waste money that could otherwise create an environment that is nurturing for all business activity, activity that lasts more than the six or eight months of a production. The overall tax burden could be lowered not only for families but for the businesses that provide long-term employment for Hawaii's people.

Digested 2/6/13

TESTIMONY OF WILLIAM G. MEYER, III

HEARING DATE/TIME: Friday, February 8, 2013
3:15 p.m. in Conference Room 016

TO: Committee on Economic Development, Government Operations and Housing
Committee on Technology and the Arts

RE: Testimony in Support of SB463

Dear Chairs, Vice-Chairs and Committee Members:

My name is William G. Meyer, III. I am a long time local attorney that practices intellectual property and entertainment law. I submit this testimony in strong support of SB463 with the minor caveat that the "excluding Internet-only distribution" language contained within the definition of "Digital Media" be stricken from SB463. Internet distribution of content continues to expand and an "Internet-only distribution exclusion" unduly restricts the type of production activity the State of Hawaii desires to attract. In this regard, Google has recently committed over $200 million to produce new content for its multi-channel Internet TV (YouTube) platform. Additionally, traditional media content producers are now deploying or "sprouting" new content on the Web and, depending on the success of the same, migrating said content to traditional distribution channels. The State of Hawaii is expanding broadband, wifi, and other forms of "connectivity." In light of such activity, it is ironic that Hawaii's refundable production credit law still has an Internet-only distribution exclusion.

During last year's legislative session, I was one of many voices which advocated an increase in the production credit, an extension of the sunset date, and an increase in the production cap. I also argued at that time that a robust and competitive incentive program would increase production activity and that the local real estate market would respond to this "demand" by producing a "supply" of sound stages to accommodate the increased production activity. In this regard, in the January 17, 2013 issue of Variety the entertainment industry news giant reported that "Incentives inspire growth of studios and crew." Said article notes that the "Sun Center Studios located near Philadelphia and Pittsburgh's 31st Street Studios are both buzzing with activity resulting from Pennsylvania's 6-year-old 25% tax credit." The article goes on to note that: "The studios couldn't thrive without the business drawn by the state's 6-year-old production incentive, which features a 25% tax credit with an additional 5% for shooting in qualified studio facilities."

I have attached a copy of said article for your Committees to review and consider.

What was advocated last year is also true for this year. Hopefully this year Hawaii will not miss the boat and will make appropriate and competitive adjustments to Act 88 to help build the local film, television and digital media industries.

Very truly yours.

/S/ William G. Meyer, III

William G. Meyer, III

Attachment