HOUSE OF REPRESENTATIVES
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

H.B. NO. 2088

A BILL FOR AN ACT

RELATING TO MEDIA INFRASTRUCTURE.

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

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. Greater numbers of productions in Hawaii 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; and

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

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

The purpose of this Act is to encourage the growth of the film industry by providing enhanced incentives that attract more film and television productions to Hawaii, thereby generating increased tax revenues.

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

"**§235-17 Motion picture, digital media, [~~and~~] film production, and media infrastructure project income tax credit.** (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 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:

(1) Twenty 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-five 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.

(b) In addition to the credits described in subsection (a), beginning on or after July 1, 2014, and ending prior to January 1, 2019, 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 in any county of the State. The following shall apply to the qualified media infrastructure project tax credit:

(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 in the initial certification of the project 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 will be 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 (b) 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 completed within a ____ year time frame;

(B) Expenditures shall be certified by the director 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, the application for a qualified media infrastructure project tax credit 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 director;

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

(A) ___ per cent multiplied by the estimated total incentive tax credits; and

(B) 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 director 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 director shall issue a final tax credit certification letter indicating the amount of tax credits certified for the state-certified infrastructure project to the

investors. Bank loan finance fees applicable to the qualified media infrastructure project expenditures, as certified by the director, 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 tax credit.

(c) 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.

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

~~(c)~~] (e) If the production tax credit under [~~this section~~] subsection (a) exceeds the taxpayer's income tax liability, the excess of credits over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than $1. All claims, including any amended claims, for tax credits under [~~this section~~] subsection (a) shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

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

(1) Meet the definition of a qualified production [~~specified in subsection (l)~~];

(2) Have qualified production costs totaling at least $200,000;

(3) Provide the State, at a minimum, a shared-card, end-title screen credit, where applicable;

(4) Provide evidence of reasonable efforts to hire local talent and crew; and

(5) Provide evidence of financial or in-kind contributions or educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both, toward the furtherance of the local film and television and digital media industries.

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

[~~(f)~~] (h) To receive [~~the~~] a tax credit[~~,~~] under subsection (a), the taxpayer shall first prequalify the production for the credit by registering with the department of business, economic development, and tourism during the development or preproduction stage. Failure to comply with this provision may constitute a waiver of the right to claim the credit.

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

[~~(h)~~] (j) Every taxpayer claiming a tax credit under [~~this section~~] subsection (a) for a qualified production shall, no later than ninety days following the end of each taxable year in which qualified production costs were expended, submit a written, sworn statement to the department of business, economic development, and tourism, identifying:

(1) All qualified production costs as provided by subsection (a), if any, incurred in the previous taxable year;

(2) The amount of tax credits claimed pursuant to [~~this section,~~] subsection (a), if any, in the previous taxable year; and

(3) The number of total hires versus the number of local hires by category and by county.

This information may be reported from the department of business, economic development, and tourism to the legislature in redacted form pursuant to subsection [~~(i)~~] (k)(4).

[~~(i)~~] (k) The department of business, economic development, and tourism shall:

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

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

(3) Provide a letter to the director [~~of taxation~~] specifying the amount of the tax credit per qualified production for each taxable year that a tax credit is claimed under subsection (a) and the cumulative amount of the tax credit for all years claimed; and

(4) Submit a report to the legislature no later than twenty days prior to the convening of each regular session detailing the nonaggregated qualified production costs that form the basis of the tax credit claims and expenditures, itemized by taxpayer, in a

redacted format to preserve the confidentiality of the taxpayers claiming the credit.

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

[~~(j)~~] (l) Total tax credits claimed per qualified production shall not exceed $15,000,000.

(m) Any taxpayer eligible to claim a qualified media infrastructure project income tax credit under subsection (b) 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 this State or otherwise secured in a manner satisfactory to the department of business, economic development, and tourism, in an amount equal to one hundred per cent of total projected expenditures determined upon initial certification; and

(3) Provide either of the following:

(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.

(n) Any taxpayer eligible to claim a qualified media infrastructure project income tax credit under subsection (b) 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, as amended by Act 89, Session Laws of Hawaii 2013;

(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.

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

[~~(k)~~] (p) Qualified productions shall comply with subsections [~~(d), (e), (f), and (h).~~] (c), (f), (g), (h), (j), and (k).

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

"Base investment" means the costs incurred and financial investment made to operate and sustain a qualified media infrastructure project.

"Commercial":

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

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

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

"Digital media" means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media.

"Director" means the director of taxation.

"Net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

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

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

<u>"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.</u>

"Qualified production":

(1) Means a production, with expenditures in the State, for the total or partial production of a feature-length motion picture, short film, made-for-television movie, commercial, music video, interactive game,

television series pilot, single season (up to twenty-two episodes) of a television series regularly filmed in the State (if the number of episodes per single season exceeds twenty-two, additional episodes for the same season shall constitute a separate qualified production), television special, single television episode that is not part of a television series regularly filmed or based in the State, national magazine show, or national talk show. For the purposes of subsections [~~(d)~~] (f) and [~~(j),~~] (l), each of the aforementioned qualified production categories shall constitute separate, individual qualified productions; and

(2) Does not include:

(A) News;

(B) Public affairs programs;

(C) Non-national magazine or talk shows;

(D) Televised sporting events or activities;

(E) Productions that solicit funds;

(F) Productions produced primarily for industrial, corporate, institutional, or other private purposes; and

(G) Productions that include any material or performance prohibited by chapter 712.

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

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

(2) Costs of set construction and operations, purchases or rentals of wardrobe, props, accessories, food, office supplies, transportation, equipment, and related services;

(3) Wages or salaries of cast, crew, and musicians;

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

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

(6) Rentals and fees for use of local facilities and locations, including rentals and fees for use of state

and county facilities and locations that are not subject to general excise tax under chapter 237 or income tax under this chapter;

(7) Rentals of vehicles and lodging for cast and crew;

(8) Airfare for flights to or from Hawaii, and interisland flights;

(9) Insurance and bonding;

(10) Shipping of equipment and supplies to or from Hawaii, and interisland shipments; and

(11) Other direct production costs specified by the department in consultation with the department of business, economic development, and tourism;

provided that any government-imposed fines, penalties, or interest that are incurred by a qualified production within the State shall not be "qualified production costs"."

SECTION 3. A taxpayer shall not be prohibited from claiming the media infrastructure project income tax credit for qualifying investments made prior to the reenactment of section 235-17, Hawaii Revised Statutes, pursuant to section 3 of Act 89, Session Laws of Hawaii 2013.

A taxpayer may claim the media infrastructure project income tax credit for investments made on a qualified media infrastructure project prior to January 1, 2019; provided that:

(1) Construction of the media infrastructure project shall commence prior to January 1, 2019; and

(2) The claim for the media infrastructure project income 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.

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

SECTION 5. This Act shall take effect on July 1, 2014, and shall apply to taxable years beginning after December 31, 2013.

INTRODUCED BY: ______________________

Calvin K.Y. Say

JAN 17 2014

H.B. NO. 2088

Report Title:
Media Infrastructure Project Tax Credit

Description:
Establishes an income tax credit for qualified media infrastructure projects. Effective July 1, 2014.

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HB HMS 2014-1032