

JAN 1 8 2013

A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

1 SECTION 1. The legislature finds that the film industry in
2 Hawaii is an important component of a diversified economy and
3 that its financial impact can be strengthened significantly if
4 existing incentives for the industry are enhanced. The
5 legislature further finds that the motion picture, digital
6 media, and film production income tax credit should be amended
7 to enhance the existing incentives.

8 The purpose of this Act is to encourage new film,
9 television, entertainment, digital media, and music production
10 activity in Hawaii, thereby increasing the number of high-
11 quality local jobs in these industries. Specifically, this Act:

- 12 (1) Extends the expiration date of the credit from
13 January, 1, 2016, to January 1, 2023;
- 14 (2) Repeals the cap on the tax credit that may be claimed
15 per qualified production; and
- 16 (3) Increases the amount of the credit.

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



1 "§235-17 Motion picture, digital media, and film
2 production income tax credit. (a) Any law to the contrary
3 notwithstanding, there shall be allowed to each taxpayer subject
4 to the taxes imposed by this chapter, an income tax credit which
5 shall be deductible from the taxpayer's net income tax
6 liability, if any, imposed by this chapter for the taxable year
7 in which the credit is properly claimed. The amount of the
8 credit shall be:

9 (1) [~~Fifteen~~] Twenty per cent of the qualified production
10 costs incurred by a qualified production in any county
11 of the State with a population of over seven hundred
12 thousand; or

13 (2) [~~Twenty~~] Twenty-five per cent of the qualified
14 production costs incurred by a qualified production in
15 any county of the State with a population of seven
16 hundred thousand or less.

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

21 In the case of a partnership, S corporation, estate, or
22 trust, the tax credit allowable is for qualified production



1 costs incurred by the entity for the taxable year. The cost
2 upon which the tax credit is computed shall be determined at the
3 entity level. Distribution and share of credit shall be
4 determined by rule.

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

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

12 (b) The credit allowed under this section shall be claimed
13 against the net income tax liability for the taxable year. For
14 the purposes of this section, "net income tax liability" means
15 net income tax liability reduced by all other credits allowed
16 under this chapter.

17 (c) If the tax credit under this section exceeds the
18 taxpayer's income tax liability, the excess of credits over
19 liability shall be refunded to the taxpayer; provided that no
20 refunds or payment on account of the tax credits allowed by this
21 section shall be made for amounts less than \$1. All claims,
22 including any amended claims, for tax credits under this section



1 shall be filed on or before the end of the twelfth month
2 following the close of the taxable year for which the credit may
3 be claimed. Failure to comply with the foregoing provision
4 shall constitute a waiver of the right to claim the credit.

5 (d) To qualify for this tax credit, a production shall:

6 (1) Meet the definition of a qualified production

7 specified in subsection [~~(l)~~] (k);

8 (2) Have qualified production costs totaling at least
9 \$200,000;

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

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

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

20 (e) On or after July 1, 2006, no qualified production cost
21 that has been financed by investments for which a credit was



1 claimed by any taxpayer pursuant to section 235-110.9 is
2 eligible for credits under this section.

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

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

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



- 1 (1) All qualified production costs as provided by
2 subsection (a), if any, incurred in the previous
3 taxable year;
- 4 (2) The amount of tax credits claimed pursuant to this
5 section, if any, in the previous taxable year; and
- 6 (3) The number of total hires versus the number of local
7 hires by category (i.e., department) and by county.
- 8 (i) The department of business, economic development, and
9 tourism shall:
- 10 (1) Maintain records of the names of the taxpayers and
11 qualified productions thereof claiming the tax credits
12 under subsection (a);
- 13 (2) Obtain and total the aggregate amounts of all
14 qualified production costs per qualified production
15 and per qualified production per taxable year; and
- 16 (3) Provide a letter to the director of taxation
17 specifying the amount of the tax credit per qualified
18 production for each taxable year that a tax credit is
19 claimed and the cumulative amount of the tax credit
20 for all years claimed.

21 Upon each determination required under this subsection, the
22 department of business, economic development, and tourism shall



1 issue a letter to the taxpayer, regarding the qualified
2 production, specifying the qualified production costs and the
3 tax credit amount qualified for in each taxable year a tax
4 credit is claimed. The taxpayer for each qualified production
5 shall file the letter with the taxpayer's tax return for the
6 qualified production to the department of taxation.

7 Notwithstanding the authority of the department of business,
8 economic development, and tourism under this section, the
9 director of taxation may audit and adjust the tax credit amount
10 to conform to the information filed by the taxpayer.

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

13 ~~(*)~~ (j) Qualified productions shall comply with
14 subsections (d), (e), (f), and (h).

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

16 "Commercial":

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

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



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

3 "Digital media" means production methods and platforms
4 directly related to the creation of cinematic imagery and
5 content, specifically using digital means, including but not
6 limited to digital cameras, digital sound equipment, and
7 computers, to be delivered via film, videotape, interactive game
8 platform, or other digital distribution media (excluding
9 Internet-only distribution).

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

16 "Production" means a series of activities that are directly
17 related to the creation of visual and cinematic imagery to be
18 delivered via film, videotape, or digital media and to be sold,
19 distributed, or displayed as entertainment or the advertisement
20 of products for mass public consumption, including but not
21 limited to scripting, casting, set design and construction,



1 transportation, videography, photography, sound recording,
2 interactive game design, and post production.

3 "Qualified production":

4 (1) Means a production, with expenditures in the State,
5 for the total or partial production of a feature-
6 length motion picture, short film, made-for-television
7 movie, commercial, music video, interactive game,
8 television series pilot, single season (up to
9 twenty-two episodes) of a television series regularly
10 filmed in the State (if the number of episodes per
11 single season exceeds twenty-two, additional episodes
12 for the same season shall constitute a separate
13 qualified production), television special, single
14 television episode that is not part of a television
15 series regularly filmed or based in the State,
16 national magazine show, or national talk show. For
17 the purposes of [~~subsections~~] subsection (d) [~~and~~
18 ~~(j)~~], each of the aforementioned qualified production
19 categories shall constitute separate, individual
20 qualified productions; and

21 (2) Does not include: daily news; public affairs programs;
22 non-national magazine or talk shows; televised



1 sporting events or activities; productions that
2 solicit funds; productions produced primarily for
3 industrial, corporate, institutional, or other private
4 purposes; and productions that include any material or
5 performance prohibited by chapter 712.

6 "Qualified production costs" means the costs incurred by a
7 qualified production within the State that are subject to the
8 general excise tax under chapter 237 or income tax under this
9 chapter and that have not been financed by any investments for
10 which a credit was or will be claimed pursuant to section
11 235-110.9. Qualified production costs include but are not
12 limited to:

- 13 (1) Costs incurred during preproduction such as location
14 scouting and related services;
- 15 (2) Costs of set construction and operations, purchases or
16 rentals of wardrobe, props, accessories, food, office
17 supplies, transportation, equipment, and related
18 services;
- 19 (3) Wages or salaries of cast, crew, and musicians;
- 20 (4) Costs of photography, sound synchronization, lighting,
21 and related services;



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

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

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

- 18 (1) Section 2 of this Act shall apply to qualified
- 19 production costs incurred on or after July 1, 2006,
- 20 and before January 1, [~~2016,~~] 2023; and
- 21 (2) This Act shall be repealed on January 1, [~~2016,~~] 2023,
- 22 and section 235-17, Hawaii Revised Statutes, shall be

1 reenacted in the form in which it read on the day
2 before the effective date of this Act."

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

5 SECTION 5. This Act shall take effect upon its approval
6 and shall apply to qualified productions new to Hawaii that have
7 commenced principal photography on or after January 1, 2013.

8

INTRODUCED BY: *Ariel Ylze*



S.B. NO. 463

Report Title:

Film Tax Credits; Amendments

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

