

JAN 18 2013

A BILL FOR AN ACT

RELATING TO DIGITAL MEDIA INFRASTRUCTURE.

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 adjusted.

5 There has been a dramatic increase in the number of state
6 and local governments attempting to attract film productions.
7 These jurisdictions have experienced dramatic increases in in-
8 state spending and significant growth in workforce and
9 infrastructure development. More productions in Hawaii would
10 stimulate more direct and indirect tax revenue.

11 The legislature also finds that it is desirable to provide
12 tools to the film industry to encourage similar dramatic growth
13 in Hawaii because the film industry:

14 (1) Infuses significant amounts of new money into the
15 economy, which are dispersed across many communities
16 and businesses and which benefit a wide array of
17 residents;

18 (2) Creates skilled, high-paying jobs;



- 1 (3) Has a natural dynamic synergy with Hawaii's top
- 2 industry, tourism, and is used as a destination
- 3 marketing tool for the visitor industry; and
- 4 (4) Is a clean, nonpolluting industry that values the
- 5 natural beauty of Hawaii and its diverse multicultural
- 6 population and wide array of architecture.

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

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

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

19 "**§235-17 Motion picture, digital media, [and] film**
20 **production, and media infrastructure project income tax credit.**

21 (a) Any law to the contrary notwithstanding, there shall be
22 allowed to each taxpayer subject to the taxes imposed by this



1 chapter, an income tax credit [~~which~~] that shall be deductible
2 from the taxpayer's net income tax liability, if any, imposed by
3 this chapter for the taxable year in which the credit is
4 properly claimed. The amount of the credit shall be:

5 (1) Fifteen per cent of the qualified production costs
6 incurred by a qualified production in any county of
7 the State with a population of over seven hundred
8 thousand; or

9 (2) Twenty per cent of the qualified production costs
10 incurred by a qualified production in any county of
11 the State with a population of seven hundred thousand
12 or less.

13 Subsections (d) through (k) shall apply only to the production
14 tax credits set forth in this subsection.

15 (b) In addition to the credits described in subsection
16 (a), beginning on or after July 1, 2013, and ending prior to
17 January 1, 2016, there shall be allowed to each taxpayer subject
18 to the taxes imposed by this chapter, a media infrastructure
19 project tax credit that shall be deductible from the taxpayer's
20 net income tax liability, if any, imposed by this chapter for
21 the taxable year in which the credit is properly claimed. The
22 amount of the credit shall be equal to twenty-five per cent of



1 the qualified costs incurred for qualified media infrastructure
2 projects in any county of the State.

3 (c) The following shall apply to the qualified media
4 infrastructure project tax credit described in subsection (b):

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

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

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



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

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

18 (A) Construction of the infrastructure project shall
19 begin within six months of the initial
20 certification and shall be per cent
21 completed within a year time frame;



- 1 (B) Expenditures shall be certified by the director
- 2 and credits shall not be earned until that
- 3 certification is made; and
- 4 (C) For purposes of allowing tax credits against
- 5 state income tax liability, the tax credits shall
- 6 be deemed earned at the time the expenditures are
- 7 made, provided that all requirements of this
- 8 subsection have been met and the tax credits have
- 9 been certified;
- 10 (6) For state-certified infrastructure projects, the
- 11 application for a qualified media infrastructure
- 12 project tax credit shall include:
- 13 (A) A detailed description of the infrastructure
- 14 project;
- 15 (B) A preliminary budget;
- 16 (C) A complete detailed business plan and market
- 17 analysis;
- 18 (D) Estimated start and completion dates;
- 19 (E) A letter issued by the mayor and council of the
- 20 county in which the infrastructure project is to
- 21 be located indicating that the project has been
- 22 approved; and



1 (F) If the application is incomplete, additional
2 information may be requested prior to further
3 action by the director;

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

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

9 (B) The minimum application fee shall be \$ _____ and
10 the maximum application fee shall be \$ _____ ;

11 and

12 (8) Prior to any final certification of a tax credit for a
13 state-certified infrastructure project, the applicant
14 for the qualified media infrastructure project tax
15 credit shall submit to the director an audit of the
16 expenditures that is performed and certified by an
17 independent certified public accountant pursuant to
18 rule. Upon approval of the audit, the director shall
19 issue a final tax credit certification letter
20 indicating the amount of tax credits certified for the
21 state-certified infrastructure project to the
22 investors. Bank loan finance fees applicable to the



1 qualified media infrastructure project expenditures,
2 as certified by the director, and any general excise
3 taxes that have been paid on the bank loan finance
4 fees and remitted to the State may be included as part
5 of the tax credit.

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

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

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

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



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

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

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

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



- 1 (2) Have qualified production costs totaling at least
- 2 \$200,000;
- 3 (3) Provide the State, at a minimum, a shared-card, end-
- 4 title screen credit, where applicable;
- 5 (4) Provide evidence of reasonable efforts to hire local
- 6 talent and crew; and
- 7 (5) Provide evidence of financial or in-kind contributions
- 8 or educational or workforce development efforts, in
- 9 partnership with related local industry labor
- 10 organizations, educational institutions, or both,
- 11 toward the furtherance of the local film and
- 12 television and digital media industries.

13 ~~(e)~~ (g) On or after July 1, 2006, no qualified
14 production cost that has been financed by investments for which
15 a credit was claimed by any taxpayer pursuant to section 235-
16 110.9 is eligible for credits under this section.

17 ~~(f)~~ (h) To receive ~~the~~ a tax credit~~,~~ under
18 subsection (a), the taxpayer shall first prequalify the
19 production for the credit by registering with the department of
20 business, economic development, and tourism during the
21 development or preproduction stage. Failure to comply with this



1 provision may constitute a waiver of the right to claim the
2 credit.

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

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

- 16 (1) All qualified production costs as provided by
17 subsection (a), if any, incurred in the previous
18 taxable year;
- 19 (2) The amount of tax credits claimed pursuant to ~~[this~~
20 ~~section,]~~ subsection (a), if any, in the previous
21 taxable year; and



1 (3) The number of total hires versus the number of local
2 hires by category (i.e., department) and by county.

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

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

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

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

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



1 qualified production to the department of taxation.
2 Notwithstanding the authority of the department of business,
3 economic development, and tourism under this section, the
4 director [~~of taxation~~] may audit and adjust the tax credit
5 amount to conform to the information filed by the taxpayer.

6 ~~[+]~~ (1) Total tax credits claimed per qualified
7 production shall not exceed \$8,000,000.

8 (m) Any taxpayer eligible to claim a qualified media
9 infrastructure project tax credit under subsection (b) shall:

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

14 (A) Percentage of completion of each qualified media
15 infrastructure project;

16 (B) Amount of moneys expended on, and amount
17 remaining to complete, each qualified media
18 infrastructure project; and

19 (C) Tax and labor clearances;

20 (2) Deliver to the department of business, economic
21 development, and tourism a performance bond in a form
22 prescribed by the department of business, economic



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

8 (3) Provide either of the following:

9 (A) Pledge of a lien on the qualified media
10 infrastructure project in favor of the State in
11 the amount of \$ _____ ; provided that the lien
12 shall expire five years after completion of the
13 project; or

14 (B) Collateral security in the amount of \$ _____ ;
15 provided that the collateral security shall be
16 released five years after completion of the
17 qualified media infrastructure project.

18 (n) Any taxpayer eligible to claim a qualified media
19 infrastructure project tax credit under subsection (b) shall
20 file with the department of business, economic development, and
21 tourism an annual report no later than March 1 following each



1 taxable year for which the credit is claimed. The report shall
2 include the following information:

3 (1) The amount of general excise tax paid under chapter
4 237;

5 (2) The amount of transient accommodations tax paid under
6 chapter 237D;

7 (3) The amount of tax credits claimed under this section,
8 as amended by Act 88, Session Laws of Hawaii 2006;

9 (4) Gross proceeds of each project;

10 (5) Number of full-time employees employed on each
11 qualified media infrastructure project;

12 (6) Number of part-time employees employed on each
13 qualified media infrastructure project;

14 (7) Number of independent contractors contracted to work
15 on each qualified media infrastructure project;

16 (8) Amount disbursed as payroll in the State on each
17 qualified media infrastructure project; and

18 (9) List of job classifications with average wage level.

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



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

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

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

7 "Commercial":

- 8 (1) Means an advertising message that is filmed using
9 film, videotape, or digital media, for dissemination
10 via television broadcast or theatrical distribution;
- 11 (2) Includes a series of advertising messages if all parts
12 are produced at the same time over the course of six
13 consecutive weeks; and
- 14 (3) Does not include an advertising message with Internet-
15 only distribution.

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



1 "Director" means the director of taxation.

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

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

16 "Qualified media infrastructure project" means the
17 development, construction, renovation, or operation of a film,
18 video, television, or media production or post-production
19 facility and the immovable property and equipment related
20 thereto, or any other facility that supports and is a necessary
21 component of the proposed infrastructure project, that is
22 located in the State; provided that the facility may include a



1 movie theater or other commercial exhibition facility to assist
2 in offsetting operating costs of the production or
3 postproduction facility, but shall not include a facility used
4 to produce pornographic matter or a pornographic performance.

5 "Qualified production":

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



1 (2) Does not include: daily news; public affairs programs;
2 non-national magazine or talk shows; televised
3 sporting events or activities; productions that
4 solicit funds; productions produced primarily for
5 industrial, corporate, institutional, or other private
6 purposes; and productions that include any material or
7 performance prohibited by chapter 712.

8 "Qualified production costs" means the costs incurred by a
9 qualified production within the State that are subject to the
10 general excise tax under chapter 237 or income tax under this
11 chapter and that have not been financed by any investments for
12 which a credit was or will be claimed pursuant to section
13 235-110.9. Qualified production costs include but are not
14 limited to:

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

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

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



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

16 SECTION 3. A taxpayer shall not be prohibited from
17 claiming the media infrastructure project tax credit for
18 qualifying investments made prior to the reenactment of section
19 235-17, Hawaii Revised Statutes, pursuant to section 4 of Act
20 88, Session Laws of Hawaii 2006.



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

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

6 (2) The claim for the media infrastructure project tax
7 credit shall be properly filed on or before the end of
8 the twelfth month following the close of the taxable
9 year for which the tax credit may be claimed.

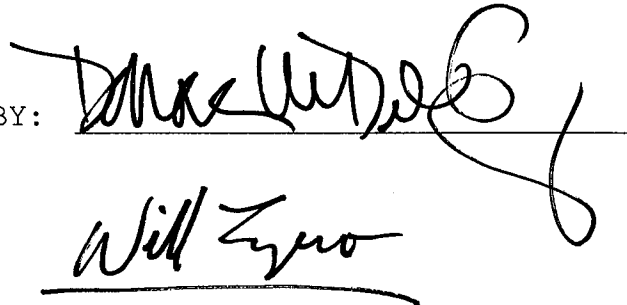
10 Failure to comply with either of the foregoing provisions shall
11 constitute a waiver of the right to claim the tax credit.

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

14 SECTION 5. This Act, upon its approval, shall apply to
15 taxable years beginning after December 31, 2012.

16

INTRODUCED BY:


Will Zygo



Report Title:

Media Infrastructure Project Tax Credit

Description:

Establishes an income tax credit for qualified media infrastructure projects.

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

