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HOUSE COMMITTEE ON FINANCE
The Honorable Representative Sylvia Luke, Chair
The Honorable Representative Ty J.K Cullen, Vice Chair

H.B. No. 423, H.D. 1, Relating to Film and Digital Media Industry Development

Hearing: Tuesday, February 28, 2017, 1:00 p.m.

The Office of the Auditor has **no position** on H.B. No. 423, H.D. 1, Relating to Film and Digital Media Industry Development, which, among other things, will amend the state's film tax incentive to provide an optional 10 percent tax credit for payroll costs incurred by a qualified production on a neighbor island. Productions would be able to obtain this 10 percent tax credit for neighbor island payroll instead of a 25 percent tax credits based on total production costs.

We recently completed an audit of the motion picture, digital media, and film production tax credit (the "film tax credit"), Report No. 16-08, *Audit of Hawaiʻi's Motion Picture, Digital Media, and Film Production Tax Credit* (November 2016), and offer testimony to advise the committee as to certain findings that may be relevant to its consideration of the bill.

Among other things, **we determined that the benefit of the film tax credit to the state cannot reasonably be assessed** because the production data that the Hawaiʻi film office currently captures is insufficient and inaccurate. We further found that the economic benefit that the film office and the department of business, economic development and tourism ("DBEDT") report as being generated by productions filming in Hawaiʻi is **overstated and misleading**. The film office and DBEDT currently include all of the production costs that qualify for the film tax credit in calculating the amount of production spending that circulates through the state in the form of household income, other industry sales, and state tax revenue. However, the production costs that are used to calculate Hawaiʻi impacts include salaries and other payments to "above-the-line" talent, such as highly paid actors, directors, and producers, most of whom likely live outside of Hawaiʻi.

In the report, we used Walt Disney's *Pirates of the Caribbean: On Stranger Tides*, which was partially shot in Hawaiʻi in 2010, to illustrate how those expenses skew the economic benefit that the film office and DBEDT are reporting (see Report No. 16-08 at page 25):

> Johnny Depp reportedly received an upfront payment of **$55 million**, or 22 percent of the production budget. If, hypothetically, Depp earned one-quarter of his wages or **$13.75 million** for filming in Hawaiʻi, his pay, by itself, would have purportedly generated **$24.06 million** in local sales and more than **$10.11 million** in income for local households, using [DBEDT's research and economic analysis division] multipliers.

(Emphasis in original.)

We recommended that the film office ensure it is reporting accurate information on the tax credit and collaborate with DBEDT's research and economic analysis division to identify production information the division needs to calculate a more realistic estimate of the economic impact of the productions' local spending. The legislature may wish to gain a better understanding of the existing credit's benefits before amending the credit to include an optional 10 percent tax credit for neighbor island payroll, as this measure would do.

We also found that the department of taxation ("DoTAX") had increased the cost of the film tax credit to the state by broadening the scope of the tax credit to include out-of-state expenses as "qualified production costs," an action we found to be inconsistent with the plain language and legislative intent of the incentive statute. DoTAX has said that limiting the basis of the tax credit to in-state expenditures could subject the tax credit to a constitutional challenge. We note that this measure does not address this issue directly; however, the bill would require that a production seeking tax credits for out-of-state expenses provide evidence that reasonable efforts to secure and use comparable products or services within the state were unsuccessful. This provision would be inconsistent with the overall statute, which, as we noted in our report, limits tax credits to in-state expenditures. If the legislature wishes to expand the scope of the tax credit to include out-of-state expenditures, it may consider revising the statute to more explicitly allow such tax credits.

In addition, we recommended the state require an independent, third-party verification of production expenditures for all productions applying for tax credits. Such a review would assure the state that the costs, which are the basis for the amount of a production's film tax credit, are in fact qualified production costs under the statute. In its response to our audit, the department of taxation did not oppose our recommendation. This measure would require productions claiming tax credits to submit an independent verification by a certified public accountant identifying all production costs, the amount of tax credits claimed, and the number of total hires versus the number of local hires by category and county. However, we note that this measure delegates to DBEDT the discretion to prescribe the procedures used to conduct the third-party verifications. The legislature may wish to prescribe the form of the verification to ensure the verification protects the state's interests.

The Auditor's Summary is attached to this testimony. Our full report is accessible through our website at http://files.hawaii.gov/auditor/Reports/2016/16-08.pdf.

Thank you for considering our testimony related to H.B. No. 423, H.B. 1.

Auditor’s Summary

Audit of Hawai‘i’s Motion Picture, Digital Media, and Film Production Income Tax Credit

Report No. 16-08

Photo: Petty Officer 2nd Class Nardel Gervacio - Public Domain, https://commons.wikimedia.org/w/index.php?curid=39383018

What problems did the audit work identify?

IN REPORT NO. 16-08, *Audit of Hawai‘i’s Motion Picture, Digital Media, and Film Production Income Tax Credit*, we found that insufficient administration of the film tax credit by the Department of Taxation (DoTAX) and the Hawai‘i Film Office has likely increased the cost of the credit while overstating the possible economic benefits that it provides to the State.

Why did these problems occur?

DOTAX HAS BROADENED THE SCOPE of the film tax credit by including out-of-state expenses as “qualified production costs.” That action is inconsistent with the plain language of the statute and the Legislature’s intent that the incentive would stimulate economic growth in Hawai‘i. For example, expenditures paid to out-of-state businesses and service providers do not infuse money into Hawai‘i’s economy or provide income for local residents; they do not create local jobs.

We also found that DoTAX has not adopted administrative rules needed to provide assurance that the film tax credits are sufficiently administered. Without such rules, tax credit qualifications are unclear, the film office

Tax credits: tools for economic development

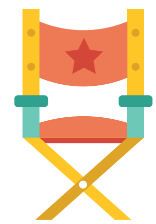
TAX CREDITS and other forms of financial incentives are forms of government spending. Tax credits reduce the amount of tax that a business otherwise would be required to pay. In the case of refundable tax credits, if the amount of a tax credit exceeds a taxpayer’s tax liability, the excess of the credit over the liability can be paid by the government to the taxpayer in the form of a tax refund.

does not have the administrative tools to enforce deadlines and other filing requirements, and there is no requirement that production costs be independently verified as qualifying for the tax credit. We have serious concerns about DoTAX's extended delay in promulgating rules. It has been more than ten years since the current form of the film tax credit was enacted.

Although the film tax credit law has existed in its current form since 2006, DoTAX has yet to promulgate rules.

While we strongly recommend that DoTAX promulgate rules without further delay, we found a number of provisions in the most recent public version of the proposed rules that should be revised to provide greater assurance that the film tax credits are being managed in accordance and consistent with the statute's intent.

We also found that the film office's analysis of film tax credit data does not measure the incentive's true costs and reports economic impacts that are based on incomplete and overstated data. For instance, it includes an unknown amount of out-of-state expenditures and wages paid to non-residents, as well as inaccurate production expenditure data. For example, highly paid producers, directors, actors, and crew are often residents of other states. While they may spend some of their salary or wages in Hawai‘i, it is very unlikely that a significant percentage of their Hawai‘i-earned income flows into the local economy. Including these salaries and other out-of-state expenditures in the calculation of benefits to the State significantly over-inflates the film tax credit's economic impacts. Instead, the film office should report to the Legislature on the quality of the jobs generated by film productions. Currently, the film office collects this type of information from production companies applying for the tax credit, but it does not track or report on it.

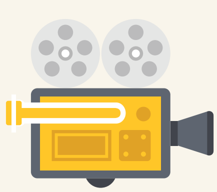


20/25

The percentages of qualified production costs a company receives as a tax credit for filming on O‘ahu (20 percent or a neighbor island (25 percent

Why do these problems matter?

THE FILM TAX CREDIT is set to sunset at the end of 2018, at which time the Legislature will need to decide whether the benefits of the program justify its continuing costs. Unfortunately, the film office cannot provide the Legislature with the relevant, accurate, and timely data necessary to make this determination.



Starring Roles

We found that, for a major motion picture shot in 2014, above-the-line talent earned $3.36 million in wages while filming in Hawai‘i. All of these jobs were filled by non-Hawai‘i residents. Based on the Department of Business, Economic Development and Tourism's economic model, the film office likely estimated that the $3.36 million earned by the non-resident talent generated more than $1.41 million in local household income, even though the majority of the above-the-line talents' earnings likely were spent outside of Hawai‘i.

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Statement of
Luis P. Salaveria
Director
Department of Business, Economic Development, and Tourism
HOUSE COMMITTEE ON FINANCE
Tuesday, February 28, 2017
1:00 PM
State Capitol, Conference Room 308

In consideration of
HB423, HD1
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chair Luke, Vice Chair Cullen, and Members of the House Committee on Finance.

The Department of Business, Economic Development and Tourism (DBEDT) **supports** Section 4 of HB 423, HD1, which 1) <u>extends the sunset date</u> of the Motion Picture, Digital Media, and Film Production Income Tax Credit to January 1, 2024; 2) <u>requires a third-party review by a qualified CPA</u> using agreed upon procedures prescribed by the department; and 3) <u>incentivizes neighbor island hires</u> by ten percent for a qualified production. DBEDT defers to the Department of Taxation and Department of Budget and Finance on the fiscal impacts of this aspect of the measure.

DBEDT requests your consideration of replacing the word "<u>or</u>" on page 3, line 19 and page 5, line 19 with "<u>and</u>", as the Department believes the minimum shared-card, end-title screen credit should remain as a requirement, and is an industry standard in the U.S. and other countries. We also recommend replacing the work "instead" in Section 2, 4. B (ii) with "in addition to." We believe that mandating the marketing component and the associated benefits should be in addition to the screen credit requirement, not in place of, recognizing that not all film and television projects lend themselves to a destination marketing or co-branding opportunity.

The department pledges to continue efforts to work collaboratively with productions and the visitor industry, to identify film/television marketing opportunities and partnerships, wherever possible.

DBEDT respectfully opposes proposed language in Section 2, (d) (5) that stipulates that productions cannot claim as a qualified expenditure the cost of purchasing and importing necessary special equipment items not available in Hawaii for their production, unless they have first proved they cannot procure those products or services within the State. We caution that not allowing imported items as qualified production expenditures can impact Hawaii's tax credit, rendering it less attractive and competitive.

Thank you for the opportunity to testify on this measure.

SUBJECT: INCOME, Extend Movie/TV Production Tax Credit

BILL NUMBER: HB 423, HD-1

INTRODUCED BY: House Committee on Economic Development & Business

EXECUTIVE SUMMARY: Extends the motion picture, television, and digital media production credit until 1/1/2024. Increases the credit amount for qualified production costs in a county other than Honolulu, if certain hiring criteria are met. It may be possible to make the case that the benefits have outweighed the costs.

SYNOPSIS: Amends HRS section 235-17(a) to allow an alternative credit of 10% of the payroll costs incurred by a qualified production in any Hawaii county with a population of 700,000 or less, if (A) the employer carries appropriate workers' compensation coverage and pays all applicable state payroll taxes for every employee for whose wages and salaries the tax credit is claimed; (B) every employee for whose wages and salary the tax credit is claimed, filed a Hawaii state income tax return for the year prior to the year in which the credit is claimed; and (C) every employee for whose wages and salary the tax credit is claimed, is a resident of a county with a population of 700,000 or less.

Amends HRS section 235-17(d) to allow alternative marketing opportunities approved by DBEDT to be substituted for a shared-card, end-title screen credit.

Amends HRS section 235-17(h) to require the taxpayer to submit a verification review by a qualified certified public accountant using procedures prescribed by DBEDT.

Amends Act 89, SLH 2013, to extend the sunset date of the credit in HRS section 235-17, so that the credit is repealed on 1/1/2024.

Makes conforming amendments.

EFFECTIVE DATE: July 1, 2038.

STAFF COMMENTS: Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred because 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 burden of the state’s general excise tax on goods and services used by film producers. 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. Act 89, SLH 2013, increased 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 and from 20% to 25% for costs incurred in a county with a population of 700,000 or less; and increased the total tax credits that may be claimed per qualified production from $8 million to $15 million. The act also extended the motion picture, digital media and film production credit to 12/31/18.

On the broader policy question of whether the credit is justified, we call attention to the findings of California's Legislative Analyst's Office (LAO).

Perhaps the most startling is the LAO's conclusion that $1 out of every $3 in credits went to productions that would have shot in California anyway. It turns out that California's credit was limited, the production companies applied for more credits than were available, and the state had to conduct a lottery to determine which of the productions would be awarded credit. But several productions began shooting even before lottery results were announced.

This result supports what Hawaii credit opponents have been saying over the years, namely, "They'll come anyway, so why do we need to pay them to come? We have great weather, blue sky, pristine beaches, and more."

The hard reality, however, is that productions are businesses and most do take a hard look at the bottom line, evidenced by the companies accounting for the other two-thirds of credits. Indeed, although the LAO lamented that industry-specific tax credits were "inappropriate public policy because they (1) give some businesses an unequal advantage at the expense of others and (2) promote unhealthy competition among states in a way that does not benefit the nation as a whole," LAO concluded that California shouldn't be giving up its production credit program while other states (including Hawaii) are actively competing with it for the production dollars. LAO recommended that California should consider scaling its program back when other states do.

At the same time, we in Hawaii need to remember that this interstate competition does affect us. We don't have a monopoly on beaches, sand, sunshine, forested hills, overgrown jungle, or other natural wonders. Productions can and do find comparable locations in Puerto Rico, New Zealand, and elsewhere.

Next, the LAO concluded that the tax credit program boosted California's economy only minimally, if at all. Because of the way California credits work, they saw state revenue benefits in the early years of the credit but found that the program cost more as time went on. We in Hawaii have had our production credit since 1997, so it's been almost twenty years. Have there been any studies about what the program has done for Hawaii's economy or Hawaii's tax revenue? None were cited to the Legislature when the Hawaii production tax credit was increased in 2013. Maybe we don't care as much about the hard dollars as we do about other intangible effects like local jobs, the development of a skilled workforce, or robust media education programs that simply weren't around at the turn of the century. Even if so, lawmakers should have data on these intangibles, and other cost-benefit information, so they can make intelligent decisions on this matter.

Certainly, the film industry promises increased opportunities. Some of them certainly have materialized. But chasing these opportunities needs to be balanced against the cold hard reality of solving the problems at hand. Lawmakers need to ask whether production tax credits create sustainable economic development. It's well known that most productions shoot for a while and then wrap; the crew that supports the production then jumps to the next one. A case may be made for the production credits if they keep the productions rolling in and contributing to the economy. But the people need to see that case. If not, the resources that are now directed to the credits could instead lower the overall tax burden not only for families but for the businesses that provide long-term employment for Hawaii's people.

Regarding the alternative payroll-based credit proposed with this House Draft, we question whether the alternative credit is viable. Payroll to local staff working on a production is already eligible as qualified production costs, which produce a 20% or 25% credit whether or not the production complies with the new proposed requirements in proposed HRS section 235-17(a)(3)(A) to (C).

Digested 2/25/2017

IBEW1260
'A'OHE HANA NUI KE ALU 'IA

February 28, 2017

The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

HB423 - RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

Chair Luke, Vice Chair Cullen and Members of the Committee,

The International Brotherhood of Electrical Workers Local Union 1260, AFL-CIO (IBEW1260), represents more than 3500 members working throughout the State of Hawaii, many of whom work in the television and digital media industry and respectfully offers the following testimony in **STRONG SUPPORT** of House Bill 423 (HB423).

Many IBEW members working in our Broadcast/Freelance jurisdiction depend on the film industry, who in addition to marketing and promoting our beautiful State, pours millions of dollars into the local economy, allowing our members to provide for their families here in Hawaii. Additionally, this tax incentive provides for and stimulates "living wage" jobs in all counties, for all Hawaii's workers.

As the elimination of this tax credit would prove detrimental to not only our members, but to the members of Hawaii's other Union's and non-union workers as well; IBEW1260 respectfully ask the Committee to support HB423, ultimately supporting Hawaii's working men and women.

Mahalo for the opportunity to testify on this issue,

Respectfully,

Daniel O. Rose

Daniel O. Rose
Business Representative
IBEW1260 / AFL-CIO

HAWAII STATE AFL-CIO
345 Queen Street, Suite 500 • Honolulu, Hawaii 96813

Randy Perreira
President

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The Twenty-Ninth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

Testimony by
Hawaii State AFL-CIO
February 28, 2017

H.B. 423, H.D.1 – RELATING TO
FILM AND DIGITAL MEDIA
INDUSTRY DEVELOPMENT

The Hawaii State AFL-CIO supports H.B. 423, H.D.1 which amends the Motion Picture, Digital Media, and Film Production Income Tax Credit by providing an additional credit amount for qualified production costs in a county with a population of 700,000 or less, provided that certain hiring criteria are met; requiring the taxpayer to verify the county of residence of local hires; and extending the repeal of the credit until January 1, 2024.

The film industry is a significant economic driver for the state of Hawaii. Many popular television shows such as Hawaii Five-0 and Lost have been produced in Hawaii including a number of box office hits such as Jurassic Park, Pirates of the Caribbean, and 50 First Dates. These movies and television shows help promote Hawaii's tourism industry and provide high-quality jobs to a number of Hawaii residents. By extending the film tax credit it will continue to encourage production companies to film and produce movies and shows in the state of Hawaii and allow Hawaii to remain competitive with other states and countries that have enacted a similar film tax credit.

Thank you for the opportunity to testify.

Respectfully submitted,

Randy Perreira
President

The House of Representatives
The Twenty-Ninth Legislature
Regular Session of 2017

Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty K.J. Cullen, Vice Chair

RE: HB 423, HD1 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

Date: Tuesday, February 28, 2017
Time: 1:00 p.m.
Place: Conference Room, 308
State Capitol
415 South Beretania Street, Honolulu, HI

Aloha Chair Luke, Vice Chair Cullen and Members of the Committee,

We are the representatives of the film and entertainment industry unions, Brenda Ching, SAG-AFTRA Hawaii Local, Irish Barber, I.A.T.S.E. Local 665, Steve Pearson, American Federation of Musicians' Local 677 and Wayne Kaululaau, Hawaii Teamsters & Allied Workers Local 996. Collectively, we represent over 1700 members who work in film, television and new media productions as performers, crew, musicians and drivers in Hawaii.

We ***strongly support*** the extension of the sunset date to January 1, 2024 with no other changes. Today we are competing in a global market and without the production film tax credit, we risk losing jobs, current productions and potential productions that are vital to the industry.

We recommend that the Legislature look to DOTAX and DBEDT's responses on whether a 35% subsidy is fiscally prudent. And although the quotas have been removed from the bill, we want to emphasize that in 2005 the Attorney General's office ruled that quotas may be unconstitutional.

The film industry is a *vibrant* and *creative* industry. At its core, it promotes the State, provides good jobs and business opportunities for a broad spectrum of local companies. The industry has proven to be good business and is an economic driver for our State.

We appreciate the legislature's long standing support of the industry. Thank you for giving us the opportunity to offer testimony on this measure.

Brenda Ching	Irish Barber	Steve Pearson	Wayne Kaululaau
SAG-AFTRA Hawaii	I.A.T.S.E. Local 665	A.F.M. Local 677	Teamsters Local 996

c/o SAG-AFTRA, 949 Kapiolani Blvd., Suite 106, Honolulu, Hawaii 96814 * 808-596-0388

MOTION PICTURE ASSOCIATION OF AMERICA

TESTIMONY IN SUPPORT

OF HAWAII HOUSE BILL 423 HD 1

BEFORE THE HOUSE COMMITTEE ON FINANCE

February 28, 2017

State Capitol

Honolulu

The Motion Picture Association of America, Inc. (MPAA) submits this written testimony in support of Hawaii House Bill 423 HD 1. MPAA members include the leading producers and distributors of television programs and motion pictures worldwide. In addition to CBS, which as you are well aware produces the locally based Hawaii 5-0 television series, MPAA members include Disney, Fox, Paramount, NBC Universal, Sony Pictures and Warner Bros.

MPAA supports the extension of the production incentive program for five years in the legislation. In addition, MPAA also supports amendments to the existing production incentive program in HB 423 HD 1 that are intended to address the concerns raised by the legislative auditor. The proposed language requires additional local employment and vendor justification in the application as well enhanced transparency through a third party audit, which will help to substantiate the validity of the claimed tax credits. We recognize that tax credits are an incentive to draw productions to the state. The industry recognizes that appropriate and reasonable evaluation will help maintain the integrity of the program for the long term. These new requirements can continue to demonstrate the value and contributions that television and motion picture production brings to the state and its economy.

In addition, MPAA and its members would respectfully propose amendments for clarification and for the purpose of maintaining a competitive tax incentive program. Instead of an acknowledgement of Hawaii in the end credits, we propose that a production be able to choose to provide marketing opportunities that "offer equal or greater promotional value to the State." Determining value of an end credit is very challenging and open to interpretation. Therefore, we recommend the State of Hawaii offer a menu of marketing opportunities that productions can select from if an end credit cannot be provided.

MPAA and its members also propose if a production were to apply for the 10-precent uplift for local labor in subsection (3), the legislature might consider requiring a form that residents complete, stating their home address, how long they have lived there, and a form of government-issued ID or other mechanism to verify their residency. Due to confidentiality and other privacy considerations under state law and regulations governing tax returns, productions will not be able to verify a resident has filed a tax return.

Extending the production incentive program, provides enhanced stability and predictability for motion picture and television producers who want to bring projects to Hawaii. This, in turn, extends Hawaii's economic reach into the world. Both the state and the industry will benefit.

Today, cost is the single most important factor for a producer in determining where a project will be located. Hawaii competes, successfully against other states, as well as nations worldwide, in attracting its share of motion picture and television productions.

The vision of the Hawaii legislature to create jobs and stimulate the economy is being realized by attracting Hawaii 5-0 and sustaining the production, which is now in its seventh season. The series currently employs 300 cast and crew members and about 250 local background performers per episode. In addition, Hawaii has been the location recently for *Jurassic World*, *Aloha*, *Godzilla* and *The Hunger Games*. NBCUniversal will soon begin production of a sequel to *Jurassic World*. The major motion picture production will employ scores of Hawaii residents and spend millions of dollars into the state economy with small businesses that provide goods and services.

Hawaii House Bill 423 HD 1 enhances that stability and paves the way for 5-0 in future years upon renewal, as well as, potentially, new television series and motion picture productions.

In addition to stimulating the economy, which is estimated to be $400 million total spend over the past five years, and this year will be an additional $87 million dollars, Hawaii 5-0 has been a Hawaiian showcase that has also stimulated tourism to the islands from visitors around the world. 5-0 is not only popular in the US, it has found enormous audiences worldwide.

Mister Chairman and members of the committee, we urge you to approve House Bill 423 HD 1 with amendments that we have proposed in concept. On behalf of MPAA and our member company studios and television companies, we look forward to the continuation of a long and successful partnership with Hawaii, and being part of your welcoming and dynamic community for years to come.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR

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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Tuesday, February 28, 2017
Time: 1:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 423, H.D. 1, Relating to Film and Digital Media Industry Development

The Department of Taxation (Department) defers to the Department of Business Economic Development and Tourism (DBEDT) on the merits of H.B. 423, H.D. 1, and provides the following comments for your consideration.

H.B. 423, H.D. 1, extends the sunset date of the motion picture, digital media, and film production income tax credit (film credit) from January 1, 2019 to January 1, 2024; provides a 10% refund of payroll costs to qualified productions in any county with a population of 700,000 or less; and adds additional requirements to qualify for the film credit. The measure is effective on July 1, 2017.

The proposed section 235-17(a)(3), Hawaii Revised Statutes (HRS), provides a credit equal to 10% of the payroll costs incurred by a qualified production in any county with a population of 700,000 or less provided that: (1) the employer carries appropriate workers' compensation coverage and pays all applicable state payroll taxes for every employee for whose wage and salaries the tax credit is claimed; (2) every employee for whose wages and salaries the tax credit is claimed, filed a Hawaii state income tax return for the year prior to the year in which the credit is claimed; and (3) every employee for whose wages and salaries the tax credit is claimed, is a resident of a county with a population of 700,000 or less.

The Department first notes that under the current law, payroll costs incurred by all qualified productions in any counties in Hawaii are qualified production costs in which the production companies could claim a film credit equal to 20% or 25%. As currently written, a qualified production company that incurs costs in a county with a population of 700,000 or less could elect to claim either (1) a 25% credit of all qualified production costs, including payroll costs, or (2) a credit equal to 10% of payroll costs. Essentially, the proposed section 235-17(a)(3), HRS, offers smaller incentives, thus are unlikely to be utilized. If the intent of this election provision is to provide a 10% payroll refund *in addition* to the current 25% film credit, the Department suggests clarifying this.

Second, the residency requirement under proposed section 235-17(a)(3)(B), HRS, may create a constitutional issue. The Department defers to the Department of the Attorney General on this issue.

Third, if the Committee wishes to require taxpayers claiming the tax credit to submit an independent certification of qualified production costs, as specified in Section 2 of this bill, the Department suggests amending section 235-17(h), Hawaii Revised Statutes, to read as follows:

"(h) Every taxpayer claiming a tax credit under this section 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) A written, sworn statement identifying:

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

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

[~~(3)~~] (C) 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)(4).~~]

(2) An independent certification of the qualified production costs eligible for the credit in the form of a tax opinion. To satisfy this paragraph, a tax opinion must reach a conclusion substantially similar to the following: "It is more likely than not that at least $(insert appropriate amount) expended by the taxpayer during (insert taxable year) would qualify as qualified production costs within the meaning of section 235-17, Hawaii Revised Statutes." To qualify as a tax opinion acceptable under this paragraph, such an opinion shall meet the requirements for covered opinions as set forth in Treasury Circular 230, 31 Code of Federal Regulations, subtitle A, part 10, section 10.35(c), which by this reference is incorporated herein, with conforming changes in nomenclature and other wording as authorized by chapter 235.

The information required in paragraph (1) may be reported from the department of business, economic development, and tourism to the legislature in redacted form pursuant to subsection (i)(4).

Failure to comply with this subsection shall constitute a waiver of the right to claim the credit."

Third, the Department defers to the Film Office within DBEDT on the administration of the additional requirements to qualify for the film credit as set forth in sections 235-17(d)(3) and (5), HRS.

Lastly, if the Committee wishes to advance the measure, the Department suggests that it be applicable to taxable years beginning after December 31, 2017 to prevent any ambiguity as to which productions the new requirements apply to. This will also allow sufficient time for the necessary form, instruction and computer system modifications necessary for proper implementation.

Thank you for the opportunity to provide comments.

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The Twenty-Ninth Legislature
Regular Session of 2017

THE HOUSE
Committee on Finance
Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
State Capitol, Conference Room 308
Tuesday, February 28, 2017; 1:00 p.m.

STATEMENT OF THE ILWU LOCAL 142 ON H.B. 423 HD 1
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT

The ILWU Local 142 supports H.B. 423 HD 1, which amends the Motion Picture, Digital Media, and Film Production Income Tax Credit by providing an additional credit option for payroll costs in a county with a population of 700,000 or less, permitting the option of offering the State an alternative marketing opportunity. The bill further adds new verification and reporting requirements, and extends the repeal of the income tax credit for five years, until January 1, 2024.

It is well recognized that the film industry not only is a significant component of Hawaii's economy, but also plays a crucial role in promoting Hawaii as a visitor destination. Moreover, at times film development and production may take much longer than anticipated, and delay the time for when a decision of where to film is made. Because of the strong competition with other jurisdictions, the film tax credit may become a key economic factor in making this decision.

H.B. 423 HD 1 would extend the film tax credit for another five years, and to that degree would provide stability and predictable economic incentives for the film industry. This will allow Hawaii to remain competitive with other jurisdictions in attracting qualified productions that will generate additional revenue, jobs, and tourism marketing exposure.

HB. 423 HD 1 would also provide an additional credit option, essentially for the neighbor islands, and this would add to the well being of their economies. This additional option provides further economic incentive for the Film Industry, as well as digital media to make a more substantial investment on the neighbor islands, as well as in the rest of our State.

The ILWU urges passage of H.B. 423 HD 1. Thank you for the opportunity to share our views on this matter.