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SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND  
TECHNOLOGY

The Honorable Glenn Wakai, Chair  
The Honorable Brian Taniguchi, Vice Chair

**H.B. No. 423, H.D. 2, Relating to Film and Digital Media Industry Development**

Hearing: Monday, March 13, 2017, 1:15 p.m.

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The Office of Auditor has **no position** on H.B. No. 423, H.D. 2, Relating to Film and Digital Media Industry Development, which, among other things, will extend the state's motion picture, digital media, and film production income tax credit ("film tax credit") for an additional five years, increase the amount of the film tax credit for certain neighbor island productions, and require a "verification review" by a certified public accountant.

We recently completed an audit of the motion picture, digital media, and film production tax credit, Report No. 16-08, *Audit of Hawai'i's Motion Picture, Digital Media, and Film Production Tax Credit* (November 2016). For your information and reference, a copy 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>.

Among other things, we determined that the department of taxation had increased the "cost" of the film tax credit by including out-of-state expenses as qualified production costs; that the benefit of the film tax credit to the state cannot reasonably be assessed because the production data that the Hawai'i film office currently captures is insufficient and inaccurate; and that the economic benefit that the film office and the department of business, economic development and tourism report as being generated by productions filming in Hawai'i is overstated and misleading. We recommended that productions be required to provide specific information about the number of Hawai'i resident and non-resident hires as well as salary information. We also recommended that productions be required to obtain an independent review by a certified public accountant of the costs that productions seek to qualify for the film tax credit.

Thank you for considering our testimony related to H.B. No. 423, H.D. 2.

# 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.



# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [dbedt.hawaii.gov](http://dbedt.hawaii.gov)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**Luis P. Salaveria**  
Director

Department of Business, Economic Development, and Tourism  
**SENATE COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM, AND TECHNOLOGY**

Monday, March 13, 2017

1:15 PM

State Capitol, Conference Room 414

In consideration of  
**HB423, HD2**  
**RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.**

Chair Wakai, Vice Chair Taniguchi, and Members of the Senate Committee on Economic Development, Tourism, and Technology.

The Department of Business, Economic Development and Tourism (DBEDT) **supports** sections of HB 423, HD2, which 1) extends the sunset date of the Motion Picture, Digital Media, and Film Production Income Tax Credit to January 1, 2024; 2) requires a third-party review by a qualified CPA using agreed upon procedures prescribed by the department; 3) requires evidence of reasonable efforts to utilize Hawaii based products or services; and 4) incentivizes neighbor island production by an increase of 10% of local payrolled labor.

DBEDT **strongly supports** extending sunset date for the tax credit to at least January 1, 2024. Extending the tax credit for a minimum of 5 years is critical to ensure a robust film industry which offers jobs, internships, workforce and economic benefits in addition to worldwide marketing exposure of Hawaii as a destination.

DBEDT **supports** requiring a verification review by a qualified certified public accountant of the information submitted for determination of credit amount. This was a recommendation by the State Auditor.

DBEDT **offers comments** regarding Section 2, Section 235-17 (a)(3), HRS, which proposes a 35% increase on all production costs providing a fifty-five percent crew quota from a neighbor island is met. This section also excludes above-the-line creative positions to be claimed for the 35%, which may unintentionally adversely impact local productions which are developed by screenwriters, directors and producers from Hawaii from accessing the credit. We believe further discussion on this section would be helpful. DBEDT defers to

the Department of Taxation and Department of Budget and Finance on the fiscal impacts of this aspect of the measure.

In Section 2, amendments to subsection (d), DBEDT requests your consideration of replacing the word “or” on page 6, line 19 with “and”, and replacing the word “Alternative” on page 6, line 20, with “Additional” as the Film Office 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 rewriting Section 2 amendment of subsection (i)(4)(B)(ii) to read:

“The names of all production companies who opted to provide additional marketing opportunities in addition to the required shared-card, end-title screen credit.”

While DBEDT believes in increasing marketing collaborations with productions that apply for the credit, we caution that a mandated marketing component, and its associated benefits, should be in addition to the screen credit requirement, not in place of, in recognition that not all film and television projects lend themselves to a destination marketing or a co-branding opportunity.

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

Thank you for the opportunity to testify on this measure.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Extend Movie/TV Production Tax Credit

BILL NUMBER: HB 423, HD-2

INTRODUCED BY: House Committee on Finance

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. Adds an option to receive a 10% credit based on payroll costs.

It may be possible to make the case that the benefits of this credit have outweighed the costs, which would justify an extension of the existing credit. The enhanced 35% credit and the alternative 10% payroll credit are questionable.

SYNOPSIS: Amends HRS section 235-17(a) to allow an alternative credit of 35% of qualified production costs in any Hawaii county with a population of 700,000 or less, if (A) at least 55% of the production's crew is hired from the county in which the qualified production costs are incurred, and (B) this requirement shall not apply to hired individuals who principally add to the creative direction, process, voice, and narrative of the production, including the screenwriter, producer, and on-camera, microphone, or voice-over talent.

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 12/31/2018.

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 finding 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 and international 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.

We need to keep in mind that this industry is in the business of telling stories, both fact and fiction. Lawmakers would do well to scrutinize the evidence and keep a sharp eye on the facts.

Regarding the enhanced 35% credit proposed, we note that even the film and entertainment industry unions, namely SAG-AFTRA, IATSE Local 665, American Federation of Musicians Local 677 and Teamsters Local 996, in their joint testimony before House Finance, expressed some uneasiness over whether a 35% subsidy is fiscally prudent.

Regarding the alternative payroll-based 10% credit proposed, we question whether the alternative credit would ever be taken. Payroll to local staff working on a production is already eligible as qualified production costs, which produce a 20% or 25% credit (possibly 35% if the enhanced credit is adopted) whether or not the production complies with the new proposed requirements in proposed HRS section 235-17(a)(3)(A) to (C).

Digested 3/10/2017





**MOTION PICTURE ASSOCIATION OF AMERICA**

**TESTIMONY IN SUPPORT**

**OF HAWAII HOUSE BILL 423 HD 2**

**BEFORE THE SENATE COMMITTEE ON**

**ECONOMIC DEVELOPMENT, TOURISM AND TECHNOLOGY**

Monday, March 13, 2017

State Capitol

Honolulu

The Motion Picture Association of America, Inc. (MPAA) submits this written testimony in support of Hawaii House Bill 423 HD 2. 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 House Bill 423 HD 2 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-percent 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 2 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 2 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.

**TESTIMONY OF NBC UNIVERSAL MEDIA, LLC. IN SUPPORT OF  
H.B. NO. 423, HD 2 RELATING TO FILM AND DIGITAL MEDIA INDUSTRY  
DEVELOPMENT**

DATE: Monday, March 13, 2017

TIME: 1:15 pm

ROOM: 414

**To:** Chairman Glenn Wakai and Members of the Senate Committee on Economic Development, Tourism and Technology:

The principal purpose of this bill is to extend the qualified production tax credit from December 31, 2018 to December 31, 2024, a period of five years. The original legislation which was passed in 2013 and signed into law as Act 89, which increased the film tax credit by 5% is scheduled to sunset on January 1, 2019.

NBC Universal Media, LLC (“NBCUniversal”) reconfirms its previous position and joins other film and TV companies in supporting this bill which extends the sunset date to January 1, 2024.

The planning, development and actual production of a film and television series takes several years to develop. If HB 423 HD2 becomes law the film industry and producers will be in a position to make long term production plans in Hawaii’s favor with the assurance that the film tax credit will remain law for at least the next seven years.

NBCUniversal together with other film and TV producers in the industry feel that an extended sunset date will foster the continued growth and provide for predictability and certainty of the film and media industry in Hawaii.

NBCUniversal develops, produces, broadcasts and distributes motion pictures, television programs and related content for distribution around the world. Over the last several years the Hawaii Legislature and the people of Hawaii have developed a clear

consensus that the motion picture, television and related digital media industries (the “Film Industry”) in Hawaii has become an important component of a diversified economy and has had a positive financial impact on the State of Hawaii which can be strengthened significantly if Hawaii’s existing incentives for the Film Industry are continued.

While Hawaii may be perceived as a highly desirable destination that would instinctively attract the Film Industry, the State needs to take affirmative steps to ensure Hawaii is at the top of the list and not left behind in the wake of other domestic and international locales. HB 423 HD 2 will help to ensure that Hawaii is competitive with film destinations around the globe and does so in a manner that is sustainable and rational for the long term. NBCUniversal stands ready to work with the Hawaii Legislature, the Administration and local Film Industry stakeholders to continue, improve and enhance Hawaii’s film incentive program to help build a predictable, robust, stable and sustainable Film Industry in the State of Hawaii.

As a result of the various film and television productions that the Film Industry has brought to Hawaii, there has been a significant increase in spending within the state and growth in workforce development due to these film and television productions. Further, such productions stimulate more direct and indirect tax revenue and that a properly designed tax incentive program such as Hawaii’s can actually increase tax revenues.

In order to stimulate continued direct investment and job creation it is necessary to continue Hawaii’s existing tax incentive program. The HB2 extension will allow Hawaii to effectively compete internationally with other film production centers in

attracting a greater number of significant projects to the islands and to continue to build Hawaii's local film industry.

The Film Industry also has a strong desire to hire locally and invest in the training and workforce development of island-based personnel and intends to continue the practice of hiring a significant number of residents and to support training and opportunities for those residents.

In addition to the extension of the tax credit this bill provides for additional requirements on the industry arising out of the report of the legislative auditor.

NBCUniversal is in agreement with these additional requirements to support the Hawaii economy and will enhance the stability of the film industry in the future.

The MPAA is proposing several amendments to HB423 HB2 that are important to the program's future, including:

1.(a) 10% Additional Labor Incentive

- Clarifying the 10% neighbor island resident incentive is in addition to the 25% incentive provided in subsection (a)(2).and not a separate, standalone incentive;
- Establishing verifiable data requirements to prove residency for every employee for whose wages and salaries the additional 10% incentive is claimed: a) Hawaii state issued ID card; b) an affirmative statement from the employee on a form prepared by DBED. It will be extraordinarily difficult for a production company to secure tax returns of workers to prove residency,

therefore we are proposing a set of requirements that are objective and verifiable. States such as Illinois require similar residency verifications.

(d)(3) Marketing Opportunities

- Providing a list of alternative marketing opportunities is supported by the film industry. The MPAA is suggesting in the statute that there be a specific alternative to link the project's website to the Hawaii tourism website.

(d)(5) Reasonable Efforts to Secure Hawaii Goods and Services

- The MPAA proposed the term 'reasonable efforts', in lieu of the concept 'evidence' to address sourcing goods or services from outside Hawaii. It is commonly understood that it is substantially more cost effective to acquire necessary items locally than to bring from the mainland. However, as production demand draws down local resources, until vendors can keep pace with production needs it will be necessary on occasion to source from outside Hawaii. The term 'evidence' connotes a standard that will be a challenge to satisfy.

Again like others in the film and television industry, NBCUniversal supports this bill relating to the qualified production tax credit and advocates for extension of the sunset date and supports the amendments proposed by MPAA.

Thank you for the opportunity to present this testimony in support of this bill.

If you have any further questions, please feel free to contact Bob Toyofuku of Advocates (808) 554-0852 or Ron Orlando of Comcast NBCUniversal (215) 823-9463.



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [ETT Testimony](#)  
**Cc:** [jlembreeco@aol.com](mailto:jlembreeco@aol.com)  
**Subject:** Submitted testimony for HB423 on Mar 13, 2017 13:15PM  
**Date:** Sunday, March 12, 2017 5:34:09 PM  
**Attachments:** [testimony](#)

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**HB423**

Submitted on: 3/12/2017

Testimony for ETT on Mar 13, 2017 13:15PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Jerald Embree	Individual	Support	No

Comments:

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**HB423**

Submitted on: 3/12/2017

Testimony for ETT on Mar 13, 2017 13:15PM in Conference Room 414

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Brad Starks	Individual	Support	No

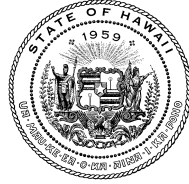
Comments: Aloha - My name is Brad Starks and I am the owner of Brad Starks Photography LLC based on the island of Maui. I am a freelance Producer, Unit Production Manager and video content creator. I also work with a grass roots organization called NMITC & Neighbor Island Film Group. We interact with more than over 2,500+ local film industry crew members and other entertainment professionals using social media throughout the neighbor islands of Hawaii. Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry. Mahalo! Brad Starks Brad Starks Photography LLC 4450 Kula Hwy Kula HI 96753

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DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Glenn Wakai, Chair  
and Members of the Senate Committee on Economic Development, Tourism, and  
Technology

Date: Monday, March 13, 2017  
Time: 1:15 P.M.  
Place: Conference Room 414, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 423, H.D. 2, 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. 2, and provides the following comments for your consideration.

H.B. 423, H.D. 2, does the following: (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; (2) provides an additional 35% credit for qualified productions in any county with a population of 700,000 or less provided that at least 50% of the crew are hired from the county in which the qualified production costs are incurred; (3) provides a 10% refund of payroll costs to qualified productions in any county with a population of 700,000 or less; and (5) adds additional requirements to qualify for the film credit. The measure has a defective effective date of July 1, 2038.

Proposed section 235-17(a)(4), 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 current law, payroll costs incurred by qualified productions qualify as costs eligible for the film tax credit of 20% or 25%, depending on which county the costs are incurred. If H.B. 423 HD2 were adopted, 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; (2) a 35% credit of all qualified production costs, including payroll costs; or (3) a credit equal to 10% of payroll costs, provided certain requirements are met. As proposed in this measure, proposed new section 235-17(a)(4) offers a smaller incentive than both existing section 235-17(a)(2) and proposed new section 235-17(a)(3); thus, it is 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, proposed section 235-17(a)(4) is not necessary; proposed new section 235-17(a)(3) allows for the additional credit.

Second, the residency requirement under proposed section 235-17(a)(4)(C), 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), HRS, 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, and the new reporting requirement set forth in section 235-17(i)(4)(B), HRS.

Lastly, if the Committee wishes to advance this 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.

**From:** [Tony Sinclair](#)  
**To:** [ETT Testimony](#)  
**Subject:** HB423 Support - Anthony Sinclair  
**Date:** Sunday, March 12, 2017 1:48:01 PM

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Aloha -

My name Anthony Sinclair and I oversee 25 social media platforms that deal with the film, TV, and entertainment industries throughout the USA with a special consideration to the neighbor islands. I interact with more than 10,500 film industry crew members and other entertainment professionals using social media. I was currently with a TV show (as producer) that shot on Maui for more than 3 months and it was amazing! The crews were excellent and the resources were top notch!

Along with other film and entertainment workers in the neighbor islands, I support bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more efforts in getting feature films, TV and other work opportunities to outer island communities as they have the manpower and professionalism to contribute to Hawaii's booming film industry.

Thank You.

Tony Sinclair

**From:** [Brad Starks](#)  
**To:** [ETT Testimony](#)  
**Subject:** HB423 TESTIMONY - Brad Starks Photography LLC / NMITC & Neighbor Island Film Group  
**Date:** Sunday, March 12, 2017 12:10:24 PM

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Aloha -

My name is Brad Starks and I am the owner of Brad Starks Photography LLC based on the island of Maui. I am a freelance Producer, Unit Production Manager and video content creator. I also work with a grass roots organization called NMITC & Neighbor Island Film Group. We interact with more than over 2,500+ local film industry crew members and other entertainment professionals using social media throughout the neighbor islands of Hawaii.

Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry.

Mahalo!

Brad Starks  
Brad Starks Photography LLC  
4450 Kula Hwy  
Kula HI 96753

**From:** [Paul Janes-Brown](#)  
**To:** [ETT Testimony](#)  
**Subject:** HB423  
**Date:** Monday, March 13, 2017 12:06:39 AM

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Aloha mai kakou, Chair and members of the committee,

My name is Paul Janes-Brown, I am a professional actor based on the island of Maui. I am a member of the Screen Actors Guild and have worked in theater, film and television my entire life; more than 50 years. There are more than 2,000 actors and crew throughout the neighbor islands of Hawaii.

Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry. Mahalo for you consideration.

A hui hou,  
Paul Janes-Brown  
PO Box 851  
Makawao, HI 96768-0851  
808-572-8000 (land line)  
808-268-1740 (mobile)



March 12, 2017

HB423

Dear Legislators,

Thank you in advance for listening to your constituents.

I am a filmmaker based here on Maui. Since moving here eight years ago, I have written two European TV films that shot on Maui, produced two homegrown feature films (GET A JOB and the forthcoming KULEANA), wrote and directed a TV pilot that is currently being shopped (SURF BREAK HOTEL, with LA-based Abominable Pictures) and directed and produced the feature documentary EVEN THOUGH THE WHOLE WORLD IS BURNING, which premiered on national PBS in April of last year.

The current tax incentive was pivotal in raising funds for these projects. Without the incentive, most would have shot elsewhere and we would not have been able to hire the many local professionals we did (as well as entry-level folks who now want to work in film and TV). Given this background, I am a big proponent of bill HB423, and support the extension and tax incentive of 35% for the neighbor islands. If passed, I know I will be able to continue to encourage productions to take place in the islands.

For example, with a 35% outer island incentive, I am confident I can bring the SURF BREAK HOTEL production to Maui in late 2017. The local spend on that will be between \$1-2 million dollars at minimum. I also have a Maui-set TV show set up at AMC, with Big Beach producing. We are currently writing that. It is local production incentives like the ones proposed that can tip the scales and move projects from development into production.

Many thanks for your services, and please feel free to reach out to me with any questions!

Aloha,

Stefan Schaefer  
Writer/Director/Producer  
2781 Kauhikoalani Pl.  
Haiku, HI 96708  
[www.stefancschaefers.com](http://www.stefancschaefers.com)

**From:** [Patricia Marino-Johnson](#)  
**To:** [ETT Testimony](#)  
**Subject:** HB423  
**Date:** Sunday, March 12, 2017 2:39:14 PM

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Aloha,

I am Patricia Marino from Maui. Along with other film and entertainment workers in the neighbor islands, I support bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more efforts in getting feature films and other work opportunities to outer island communities as they have the manpower and professionalism to contribute to Hawaii's film industry.

Mahalo  
Patricia

**From:** [Gina Duncan](#)  
**To:** [ETT Testimony](#)  
**Subject:** HB423  
**Date:** Sunday, March 12, 2017 1:47:46 PM

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Aloha ,

I am a Maui resident and involved in the theater and film industry here. The arts play a vital part in all our lives.

Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry.

Aloha,

Regina Duncan  
3002 Aina Lani Dr Pukalani HI 96768

**From:** [Kim Mosley](#)  
**To:** [ETT Testimony](#)  
**Subject:** HB423  
**Date:** Sunday, March 12, 2017 1:00:55 PM

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Aloha - My name is Kim Mosley and I am professional fine artist on the island of Maui for 14 years now. I not only run my own business, but I do lots of side jobs within the film industry. Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry.

Mahalo,  
Kim Mosley

**From:** [OldApe49](#)  
**To:** [ETT Testimony](#)  
**Subject:** I SUPPORT HB423 !!  
**Date:** Sunday, March 12, 2017 1:56:44 PM

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Hello,

My name is Ray Fite and I work for Richmond Ohana Productions on the island of Maui. I am a RV / Motor Home driver for Richmond Ohana Productions, we set up the Basecamps and provide the RVs and Porta-pottys .

Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry.

More work for the Neighbor Islands will help the local economy...  
much Mahalos, Ray

**From:** [Hana Productions](#)  
**To:** [ETT Testimony](#)  
**Subject:** In SUPPORT of HB423  
**Date:** Sunday, March 12, 2017 2:30:08 PM

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Aloha,

My name is Sky Pierce and I am co-owner of Hana Productions. We are a Maui based production company providing services to the film and photo industry. We have been in business for over 10 years, and have seen the industry grow in that time. The existing tax credit incentives have definitely played an important role in building the industry on all islands. The film industry in general is an excellent alternative to the traditional Agriculture, Tourism and Construction, all of which are important, but have significantly more potential downsides.

I SUPPORT HB423 and the efforts to both extend the current tax credit, as well as raise the incentive for neighbor islands to 35%.

These tax credits will make Hawai'i a more desirable location for films, photoshoots and television. These productions provide employment, contribute significantly to a vast variety of other businesses, and then leave.

The neighbor islands in particular need this additional incentive to compete with O'ahu and provide much needed opportunity on other islands.

**Sky Pierce**, Owner  
Hana Productions LLC  
office: 808.248.7314  
mobile: 808.264.5561



[www.HanaProductions.com](http://www.HanaProductions.com)

**From:** [Irish B \(via Dropbox\)](#)  
**To:** [ETT Testimony](#)  
**Subject:** Irish B shared "2017 Testimony.HB423.HD2.03.13.17.pdf" with you  
**Date:** Sunday, March 12, 2017 7:47:10 AM

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Hi there,

Irish B (alohairish@aol.com) invited you to view the file "**2017 Testimony.HB423.HD2.03.13.17.pdf**" on Dropbox.

Irish said:

*"ALOHA, CHAIRMAN WAKAI, VICE CHAIRMAN TANIGUCHI AND COMMITTEE MEMBERS - PLEASE ACCEPT THIS WRITTEN TESTIMONY ON HB 423 BEING HEARD ON MONDAY, 03/13/17, AT 1:15PM IN CONFERENCE ROOM 414. THANK YOU, IRISH BARBER, IATSE LOCAL 665 BRENDA CHING, SAG-AFTRA WAYNE KAULULAAU, TEAMSTER LOCAL 996 STEVE PEARSON, MUSICIAN'S UNION"*

[View file](#)

Enjoy!

The Dropbox team

**From:** [Hugh England](#)  
**To:** [ETT Testimony](#)  
**Subject:** More film work for Maui - I support bill HB423  
**Date:** Sunday, March 12, 2017 8:46:55 PM  
**Importance:** High

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Aloha,

My name is Hugh England, I have been in the film business in Hawaii since 1980 to 2017.  
I am involved in all aspects of Art Dept in the industry and am a current member of our Union Local 665.  
Film business is my only form of income so I rely on bringing film work to Maui.

I support the tax incentives but due to additional expense of filming on Maui I support bill HB423.

Mahalo  
Hugh England  
[www.artdeptmaui.com](http://www.artdeptmaui.com)



**From:** [Luisa](#)  
**To:** [ETT Testimony](#)  
**Subject:** Support bill HB423  
**Date:** Sunday, March 12, 2017 11:06:55 PM

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Aloha,

My name is Luisa Ascensao, I am a professional makeup artist, with 29 years of experience in London, New York City, and Maui. I have been based on Maui for many years now and it would be great if we had more film production on Maui, and neighbor islands. The industry professionals that live on the outer islands struggle to survive given that the great majority of the film production takes place on Oahu.

Along with other film and entertainment workers in the neighbor islands, I support bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more efforts in getting feature films and other work opportunities to outer island communities as they have the manpower and professionalism to contribute to Hawaii's film industry.

Thank you,  
Luisa Ascensao

[www.luisaascensao.com](http://www.luisaascensao.com)  
808.870.9175

**From:** [Adi Eil-Ad](#)  
**To:** [ETT Testimony](#)  
**Subject:** Support for bill HB423.  
**Date:** Sunday, March 12, 2017 3:13:40 PM

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My name is Adi Eil-Ad.

A film editor with a 20 year track record of work in Los Angeles on numerous projects. I live in Kihei and have recently completed editing a local feature film called Kuleana.

I would like to state my support for bill HB423.

Sent from my iPhone with Aloha

**From:** [Hunt Decker](#)  
**To:** [ETT Testimony](#)  
**Subject:** Support for bill HB423  
**Date:** Sunday, March 12, 2017 3:38:02 PM

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Aloha Rep. Justin Woodson,

My name is Hunt Decker and I'm a resident in Kihei, Maui. My background spans 42 years in the television industry both commercial, live broadcast and corporate. My title was Director/Producer.

I spent 30 years in commercial broadcast television and 12 years in corporate television where I also managed a national television department.

I also free lanced for many live sports venue's as Director in my career. I've worked out of CBS Studio City, The Beverly Hilton and in Las Vegas.

I support the 35% tax incentive for bill HB423.

Mahalo, Hunt Decker  
(808) 212-5433

**From:** [Infinitefilms Gmail](#)  
**To:** [ETT Testimony](#)  
**Subject:** SUPPORT FOR HAWAII FILM & TV BILL  
**Date:** Sunday, March 12, 2017 2:12:57 PM

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Aloha -

My name is Jonathan Yudis and I am the president and creative director of Infinite entertainment. I am a 25 year film and television industry veteran. I graduated from New York University's Tisch school of the arts with a BFA in film and television and received my MFA graduate degree from American film Institute.

I have been a writer producer and director in feature films and television since 1992. Some of the projects that I have been involved in include Disney's Pocahontas 2 (Director of live action rotoscoping), and television shows such as 'Ren & Stimpy' and TruTV's 'police officer of the year.'

I am currently in production on a Hawaii feature film, the holiday Christmas comedy "Aloha Santa" which shoots and has its production entirely based on Maui.

I interact with more than over 2,500+ local film industry crew members and other entertainment professionals using social media throughout the neighbor islands of Hawaii.

Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry.

Mahalo,

Jonathan Yudis  
Infinite Entertainment  
808-280-6969

Transmitted with Aloha & Joy from my iPhone

**From:** [Mary Ann Perreira](#)  
**To:** [ETT Testimony](#)  
**Subject:** Support for HB423 and extension and tax incentive of 35% for neighbor islands  
**Date:** Sunday, March 12, 2017 2:15:57 PM

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ALOHA,

My name is Mary Ann Perreira owner of MAPAC based on Maui. I am a senior actor who played a major part in a local commercial which played on major local TV stations on 2016. I love working my craft while remaining here in the islands. The money I make is spent here which in turn benefits our communities.

Among many local talent in front and behind the camera, I support bill HB423 and it's extension. I also support the 35% tax incentives for the neighbor islands. My wish is for Maui to have feature films and other projects here.

Mahalo for all you do on our behalf.

Sent from my iPad

**From:** [Robert Angelo](#)  
**To:** [ETT Testimony](#)  
**Subject:** Support letter for Bill HB423.  
**Date:** Sunday, March 12, 2017 3:16:31 PM

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*Aloha,*

*I'm Robert Angelo, Artistic Director at ACTNOW! Productions LLC.  
I am also a producer, director, actor and acting coach based on the island of Maui.*

*I'm writing this letter to support the efforts of our elected officials with Bill HB423  
and the support for the additional 35% tax incentive for the neighbor islands,  
along with other local film and entertainment workers living & working in our  
neighbor islands. We would like more feature films, other creative projects and  
opportunities come to our island.*

*Mahalo!*

*In the Spirit of Aloha,  
Robert Angelo  
ACTNOW! Productions LLC*

**From:** [Perry Kunin](#)  
**To:** [ETT Testimony](#)  
**Subject:** Tax Credit  
**Date:** Sunday, March 12, 2017 2:28:00 PM

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Dear Rep. Woodson

My name is Perry Kunin. I'm a SAG/ Aftra actor living on Maui.

Along with other film and entertainment workers in the neighbor islands, I support bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more efforts in getting feature films and other work opportunities to outer island communities as they have the manpower and professionalism to contribute to Hawaii's film industry.

Respectively, P.K.

**From:** [Samantha Isom](#)  
**To:** [ETT Testimony](#)  
**Subject:** TAX INCENTIVE FOR FILM WORK ON MAUI  
**Date:** Monday, March 13, 2017 5:39:08 AM

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ALOHA, This is Samantha Isom. I began working as a commercial image maker (photography & video) on Maui in 2015 (based out of Lahaina). Short to follow, I had to go back to the mainland for lack of work. I know there was much more sustainable work in 2016 and look forward to more coming so that I am not forced (again) to leave. With the closing of the sugar industry, Maui could use a big incentive to create more (on island) jobs. I have been made aware of a potential 35% tax incentive to bring more commercial work (photography and video) to Maui. I would like to share my support for this incentive.

Along with other local film and entertainment workers living & working in the neighbor islands, I support Bill HB423 and the support the extension and tax incentive of 35% for the neighbor islands. I would like to see more feature films and other work opportunities come to our community as we have the manpower and professionalism to contribute to Hawaii's growing film industry.

Mahalo,  
Samantha Isom  
Samantha Isom Pictures

--

Samantha Isom Pictures

[www.Samanthaisom.com](http://www.Samanthaisom.com)

917-723-7984

Fax 718-783-9708

Blog: <http://samiamfoto.blogspot.com/>

twitter: samiamfoto

<http://www.blurb.com/b/2245406-so-what-are-you-anyway>

<http://www.blurb.com/bookstore/detail/2115829>

AWARDS (some of many):

PDN The Great Outdoors - 2015

Photoville (NYPH Festival) finalist - Animated Gif (cinemagraph)

PDN contest winner, (<http://photobooknyc.com/>)

Creativity International (multiple years)

Best of Photography .... Photographer's Forum Magazine

APA NY 1st place

IPA 10th anniversary edition