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To: The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Economic Development & Business

Date: Wednesday, February 6, 2019

Time: 10:10 A.M.

Place: Conference Room 309, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: H.B. 645, 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. 645, and offers the following comments for the Committee's consideration.

H.B. 645 amends the motion picture, digital media, and film production income tax credit (film credit) to include post-production activities performed in Hawaii film studios as qualified production costs. The bill is effective upon its approval and applies to taxable years beginning after December 31, 2019.

This measure does not have a significant administrative impact on the Department's administration of the film credit. The Department notes that DBEDT certifies the film credit by pre-qualifying productions, certifies qualified production costs, and certifies the amount of film credit allocated to each qualified production for the taxable year.

Thank you for the opportunity to provide comments.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Economic Development & Business
Wednesday, February 6, 2019 at 10:10 a.m.

By

Christopher P. Lee, Director, Academy for Creative Media System
on behalf of

Vassilis L. Syrmos, Vice President for Research and Innovation
University of Hawai'i System

HB 645 – RELATING TO HAWAII FILM STUDIOS

Chair McKelvey, Vice Chair Kitagawa, and members of the committee:

The University of Hawai'i (UH) supports the intent of this legislation to increase the amount of production and post production that takes place in the State of Hawai'i and particularly supports any incentive to increase the use of qualified production facilities in the islands.

It is UH's hope to work with the State of Hawai'i to build a full-service motion picture, television and digital content studio complex on the University of Hawai'i at West O'ahu campus, which would greatly enhance the ability of the industry to shoot not just beautiful scenery, but to build their interior sets and even do post production on their projects. This has the potential to more than double the current direct spend in production because almost every feature film such as *Jurassic Park*, *Pirates of the Caribbean*, and *Jumanji*, have been forced to leave Hawai'i to complete production due to a lack of infrastructure. Hawai'i currently does not have any sufficient studio facility to house a major motion picture – resulting in a loss of business and jobs for the state.

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, Tax Credit for Post Production in Hawaii Film Studios

BILL NUMBER: HB 645

INTRODUCED BY: HAR, KONG, SAY, TOKIOKA, McKelvey

EXECUTIVE SUMMARY: Amends the motion picture, digital media, and film production income tax credit, to include, as qualified production costs, post-production activities and services performed in Hawaii film studios. This measure may run afoul of the Commerce Clause of the U.S. Constitution.

SYNOPSIS: Amends section 235-17, HRS, which governs the motion picture, digital media, and film production income tax credit. Provides that costs incurred for post-production activities and services shall only be considered "qualified production costs" if at least 75% of the post-production activities and services are performed at qualified post-production facilities.

Defines "qualified post-production facility" as a film studio located in the State.

EFFECTIVE DATE: Taxable years beginning after December 31, 2019.

STAFF COMMENTS: The motion picture, digital media, and film production income tax credit applies to expenses incurred by a motion picture, digital media, or film production to make Hawaii more competitive as a destination for productions. The definition of "qualified production costs" under existing law already limits qualified costs on which the credit is based to costs subject to the Hawaii GET or to Hawaii net income tax. This bill takes the restriction one step further and disallows post-production costs unless the work is done within Hawaii.

We are concerned that limitation of the credit in this manner may run afoul of federal Commerce Clause limitations. *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263 (1984); *In re Hawaiian Flour Mills, Inc.*, 76 Hawai'i 1, 868 P.2d 419 (1994). *Bacchus* called it a "cardinal rule of Commerce Clause jurisprudence" that "[n]o State, consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce ... by providing a direct commercial advantage to local business.'" *Id.* at 268 (quoting *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 320 (1977)).

In *Bacchus*, the taxing statute facially discriminated against interstate commerce. Specifically, it was an exemption from Hawaii Liquor Tax on sales of locally produced okolehao and fruit wine. The U.S. Supreme Court invalidated the exemption. The bill before this Committee awards a credit for post-production costs incurred at a local studio but denies it if the studio is elsewhere. That also could be facial discrimination against interstate commerce. For that reason, the bill should be carefully analyzed for compliance with this constitutional provision if it is to move forward.

Digested 2/2/2019

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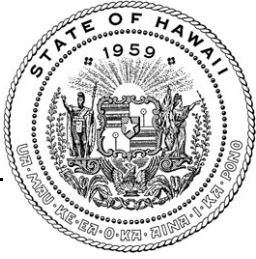
HB-645

Submitted on: 2/5/2019 10:10:35 AM

Testimony for EDB on 2/6/2019 10:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



DAVID Y. IGE
GOVERNOR
MIKE MCCARTNEY
DIRECTOR

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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LATE

Statement of
Mike McCartney
Director

Department of Business, Economic Development, and Tourism
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

Wednesday, February 06, 2019
10:10 AM

State Capitol, Conference Room 309

In consideration of
HB 645
RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

Chair McKelvey, Vice Chair Kitagawa, and Members of the House
Committee on Economic Development & Business.

The Department of Business, Economic Development and Tourism (DBEDT) would like to offer **comments** for HB 645, which seeks to amend the Motion Picture, Digital Media, and Film Production Income Tax Credit to include as qualified production costs, post production activities and services performed in Hawaii film studios.

As post-production activities and services are already included in statute as "qualified production expenditures," DBEDT believes it is unnecessary to insert the new language proposed in this measure.

With the exception of lifting the \$35 million overall spending ceiling as referenced in Senate Bill 33, SD1, DBEDT does not recommend making other amendments to the measure so as to reassure the industry that the Legislature wants to maintain the stability and predictability of the program.

Thank you for the opportunity to testify on this measure.