

JAN 20 2022

A BILL FOR AN ACT

RELATING TO FILM INFRASTRUCTURE TAX CREDIT.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§235- Motion picture, digital media, and film infrastructure tax credit. (a) For taxable years beginning after December 31, 2021, there shall be allowed to each taxpayer that invests \$3,000,000 or more in a film infrastructure project, subject to the taxes imposed by this chapter, a nonrefundable tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be twenty per cent of the eligible infrastructure costs made by the taxpayer in any county of the State.

A film infrastructure project occurring in more than one county may prorate its expenditures based upon the amounts spent



1 in each county, if the population bases differ enough to change
2 the percentage of tax credit.

3 In the case of a partnership, S corporation, estate, or
4 trust, the tax credit allowable is for eligible infrastructure
5 costs incurred by the entity for the taxable year. The cost
6 upon which the tax credit is computed shall be determined at the
7 entity level. Distribution and share of credit shall be
8 determined by rule.

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

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

16 (b) The credit allowed under this section shall be claimed
17 against the net income tax liability for the taxable year.

18 (c) All claims, including any amended claims, for tax
19 credits under this section shall be filed on or before the end
20 of the twelfth month following the close of the taxable year for
21 which the credit may be claimed. Failure to comply with the



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

3 (d) The total amount of tax credits allowed under this
4 section in any particular year shall be \$10,000,000; however, if
5 the total amount of credits applied for in any year exceeds the
6 aggregate amount of credits allowed for that year under this
7 section, the excess shall be treated as having been applied for
8 and claimed in the three immediately succeeding taxable years
9 and may be claimed in those years.

10 If a taxpayer sells, assigns, or otherwise transfers a
11 credit under this section to another taxpayer, the transferor
12 and transferee shall jointly submit written notification of the
13 transfer to the department no later than thirty days after the
14 transfer. The notification shall include the credit certificate
15 number, the date of transfer, the amount of the credit
16 transferred, the tax credit balance before and after the
17 transfer, the tax identification numbers for both the transferor
18 and the transferee and any other information required by the
19 director. After the initial issuance of a tax credit, the
20 credit may be sold, assigned, or otherwise transferred not more
21 than three times. Failure to comply with this subsection will



1 result in a disallowance of the tax credit until there is full
2 compliance on both the part of the transferor and the
3 transferee, and all subsequent transferors and transferees. The
4 department shall provide a copy of the notification of
5 assignment to the director upon request.

6 No tax credits transferred pursuant to this section shall
7 be subject to a post-certification remedy; and the department of
8 business, economic development, and tourism and the director of
9 taxation shall have no right, except in the case of possible
10 material misrepresentation or fraud, to conduct any further or
11 additional review, examination or audit of the expenditures or
12 costs for which the tax credits were issued. The sole and
13 exclusive remedy of the department and the director shall be to
14 seek collection of the amount of the tax credits from the
15 taxpayer that committed the fraud or misrepresentation.

16 (e) Each taxpayer claiming a tax credit under this section
17 shall:

18 (1) First prequalify for the credit by registering the
19 film infrastructure project with the department during
20 the development or preproduction stage. The taxpayer
21 undertaking a film infrastructure project shall apply



1 to the department for a film infrastructure tax credit
2 certificate no later than ninety days after the first
3 expenses or costs are incurred, and shall provide with
4 the application the information as the department may
5 require to determine the project's eligibility as a
6 film infrastructure project.

7 Each application for a film infrastructure tax
8 credit certificate shall include:

- 9 (A) A detailed description of the film infrastructure
10 project;
11 (B) A preliminary budget;
12 (C) Estimated completion date; and
13 (D) Other information as the department may require.

14 The department may require an independent audit
15 of all project costs and expenditures before issuing a
16 film infrastructure tax credit certificate. If the
17 department determines that the project has eligible
18 infrastructure costs, the department shall indicate
19 the amount of costs or expenditures that has been
20 established to the satisfaction of the department, and
21 issue to the taxpayer a film infrastructure tax credit



1 certificate for investors indicating the amount of tax
2 credits available under this section. The department
3 shall provide a copy of the film infrastructure tax
4 credit certificate to the director, upon request.

5 Before the issuance of a film infrastructure project
6 tax credit voucher to a taxpayer based upon the film
7 infrastructure tax credit certificate issued by the
8 department, the taxpayer undertaking the film
9 infrastructure project shall provide the department
10 with a description of the progress on the project and
11 an estimated completion date. The department may
12 require an independent audit of all project costs and
13 expenditures before the issuance of the film
14 infrastructure tax credit voucher to a taxpayer. No
15 film infrastructure tax credit voucher may be issued
16 before the film infrastructure project is shown to be
17 one hundred per cent complete; and

18 (2) No later than ninety days following the end of each
19 taxable year in which eligible infrastructure costs
20 were expended, submit a written, sworn statement to
21 the department, together with a verification review by



1 a qualified certified public accountant using
2 procedures prescribed by the department, identifying:

3 (A) All eligible infrastructure costs, if any,
4 incurred in the previous taxable year;

5 (B) The amount of tax credits claimed pursuant to
6 this section, if any, in the previous taxable
7 year; and

8 (C) The number of total hires versus the number of
9 local hires by category and by county.

10 This information may be reported from the department
11 to the legislature in a redacted format pursuant to
12 subsection (g) (5).

13 (f) The director shall prepare forms as may be necessary
14 to claim a credit under this section. The director may also
15 require the taxpayer to furnish information to ascertain the
16 validity of the claim for credit made under this section and may
17 adopt rules necessary to effectuate the purposes of this section
18 pursuant to chapter 91.

19 (g) The department shall:



- 1 (1) Charge a reasonable administrative fee sufficient to
2 cover the department's costs to analyze applications
3 submitted under this section;
- 4 (2) Maintain records of the names of the taxpayers and
5 qualified productions thereof claiming the tax credits
6 under this section;
- 7 (3) Obtain and total the aggregate amounts of all eligible
8 infrastructure costs per qualified production and per
9 qualified production per taxable year;
- 10 (4) Provide a letter to the director of taxation
11 specifying the amount of the tax credit per qualified
12 production for each taxable year that a tax credit is
13 claimed and the cumulative amount of the tax credit
14 for all years claimed; and
- 15 (5) Submit a report to the legislature no later than
16 twenty days prior to the convening of each regular
17 session detailing the non-aggregated eligible
18 infrastructure costs that form the basis of the tax
19 credit claims and expenditures, itemized by taxpayer,
20 in a redacted format to preserve the confidentiality
21 of the taxpayers claiming the credit.



1 Upon each determination required under this subsection, the
2 department shall issue a letter to the taxpayer, regarding the
3 qualified production, specifying the eligible infrastructure
4 costs and the tax credit amount qualified for in each taxable
5 year a tax credit is claimed. The taxpayer for each qualified
6 production shall file the letter with the taxpayer's tax return
7 for the qualified production to the department of taxation.
8 Notwithstanding the authority of the department of business,
9 economic development, and tourism under this section, the
10 director of taxation may audit and adjust the tax credit amount
11 to conform to the information filed by the taxpayer.

12 (h) For the purposes of this section:

13 "Department" means the department of business, economic
14 development, and tourism.

15 "Director" means the director of taxation.

16 "Eligible infrastructure costs" means costs incurred by a
17 film infrastructure project within the State that are subject to
18 the general excise tax under chapter 237 or income tax under
19 this chapter and that have not been financed by any investments
20 for which a credit was or will be claimed under this chapter.



1 "Eligible infrastructure costs" include but are not limited to
2 include:

3 (1) All expenditures to provide buildings, facilities, or
4 installations, whether a capital lease or purchase,
5 together with necessary equipment for a film, video,
6 television, digital production facility, or digital
7 animation production facility;

8 (2) Project development, including design, professional
9 consulting fees and transaction costs;

10 (3) Development, preproduction, production, post-
11 production and distribution equipment, and system
12 access; and

13 (4) Fixtures and other equipment.

14 "Film infrastructure project" means an infrastructure
15 project undertaken in this State by an entity that:

16 (1) Meets the definition of a "qualified production" under
17 section 235-17;

18 (2) Is authorized to conduct business in this State;

19 (3) Is not in default on a loan made by the State or a
20 loan guaranteed by the State, nor has ever declared

21 bankruptcy under which an obligation of the entity to



1 pay or repay public funds was discharged as a part of
2 the bankruptcy; and

3 (4) Has been approved by the department as qualifying for
4 a film infrastructure tax credit under this section.

5 "Infrastructure project" means a capital project to provide
6 one or more building, facility, or installation needed for the
7 digital media and motion picture industry to function in this
8 State.

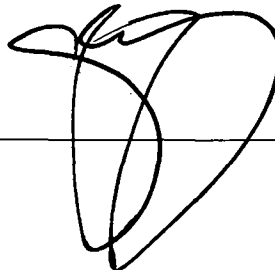
9 "Net income tax liability" means net income tax liability
10 reduced by all other credits allowed under this chapter.

11 "Post-certification remedy" means the recapture,
12 disallowance, recovery, reduction, repayment, forfeiture,
13 decertification or any other remedy that would have the effect
14 of reducing or otherwise limiting the use of a tax credit
15 provided by this section."

16 SECTION 2. New statutory material is underscored.

17 SECTION 3. This Act, upon its approval, shall apply to
18 taxable years beginning after December 31, 2021.

19
INTRODUCED BY: _____

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

S.B. NO. 2167

Report Title:

Motion Picture, Digital Media, and Film Infrastructure Tax Credit; Department of Business, Economic Development and Tourism

Description:

Creates a nonrefundable twenty percent film infrastructure tax credit. Requires that the film infrastructure project must spend at least \$3,000,000 on buildings, facilities, or installations. Caps the credit at \$10,000,000 per year.

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

