
A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

1 SECTION 1. The legislature finds that the film industry in
2 Hawaii is an important component of a diversified economy and
3 that its financial impact can be strengthened significantly if
4 existing incentives for the industry are adjusted.

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

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

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



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

8 The legislature also finds that the industry has a strong
9 desire to hire locally and invests in the training and workforce
10 development of island-based personnel. It is the intent of this
11 Act to continue to encourage this industry practice of hiring a
12 significant number of residents and to support training and
13 opportunities for those residents.

14 The legislature further finds that it is necessary to
15 enhance the existing tax incentive programs that use the front-
16 end budgeting methods normally used by the film industry and
17 that lower production costs in order to allow Hawaii to compete
18 with other film production centers in attracting a greater
19 number of significant projects to the islands and to continue to
20 build our local film industry infrastructure.

21 The purpose of this Act is to encourage the growth of the
22 film industry by providing enhanced incentives that attract more



1 film and television productions to Hawaii, thereby generating
2 increased tax revenues.

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

5 "§235-17 Motion picture, digital media, [and] film
6 production, special or visual effects and animation, and media
7 infrastructure project income tax credit. (a) Any law to the
8 contrary notwithstanding, there shall be allowed to each
9 taxpayer subject to the taxes imposed by this chapter, an income
10 tax credit which shall be deductible from the taxpayer's net
11 income tax liability, if any, imposed by this chapter for the
12 taxable year in which the credit is properly claimed. The
13 amount of the credit shall be:

14 (1) [~~Fifteen~~] _____ per cent of the qualified production
15 costs incurred by a qualified production in any county
16 of the State with a population of over seven hundred
17 thousand; or [~~(2) Twenty~~] _____ per cent of the
18 qualified production costs incurred by a qualified
19 production in any county of the State with a
20 population of seven hundred thousand or less[+]; and

21 (2) _____ per cent of the qualified special or visual
22 effects and animation production costs incurred by a



1 qualified production in any county of the State;
2 provided that this five per cent shall be in addition
3 to any income tax credit set forth in paragraph (1).

4 (b) In addition to the credits described in subsection
5 (a), beginning on July 1, 2011, and ending prior to January 1,
6 2016, the following credits shall apply:

7 (1) _____ per cent of the qualified production costs
8 incurred for qualified media infrastructure projects
9 in any county of the State with a population of over
10 seven hundred thousand; or

11 (2) _____ per cent of the qualified production costs
12 incurred for qualified media infrastructure projects
13 in any county of the State with a population of seven
14 hundred thousand or less.

15 (c) The following shall apply to the qualified media
16 infrastructure project tax credits described in subsection (b):

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

20 (2) The qualified media infrastructure project tax credit
21 shall be non-refundable. The portion of the tax
22 credit that exceeds the tax liability of the taxpayer



1 for the tax year may be carried forward to offset net
2 income tax liability in subsequent tax years for a
3 period not to exceed ten taxable years or until
4 exhausted, whichever occurs first. The director of
5 taxation may require the tax credits to be taken or
6 assigned in the tax period in which the credit is
7 earned or may structure the tax credit in the initial
8 certification of the project to provide that only a
9 portion of the tax credit be taken over the course of
10 two or more years;

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

14 (4) If all or a portion of an infrastructure project is a
15 facility that may be used for other purposes unrelated
16 to production or post production activities, then the
17 project shall be approved only if a determination is
18 made that the multiple use facility will support and
19 will be necessary to secure production or post
20 production activity for the production and post
21 production facility and the applicant provides
22 sufficient contractual assurances that the facility



1 will be used as a state-of-the-art production or post
2 production facility, or as a support and component
3 thereof, for the useful life of the facility. No tax
4 credits shall be earned on such multiple use
5 facilities until the production or post production
6 facility is complete;

7 (5) Tax credits for infrastructure projects shall be
8 earned only as follows:

9 (A) Construction of the infrastructure project shall
10 begin within six months of the initial
11 certification and shall be one hundred per cent
12 completed within a five year time frame;

13 (B) Expenditures shall be certified by the director
14 of taxation and credits shall not be earned until
15 that certification; and

16 (C) For purposes of allowing tax credits against
17 state income tax liability or assignment of the
18 tax credits, the tax credits shall be deemed
19 earned at the time the expenditures are made,
20 provided that all requirements of this subsection
21 have been met and the tax credits have been
22 certified;



- 1 (6) For infrastructure projects that have been initially
2 certified by the department of taxation, the
3 application for a qualified media infrastructure
4 project tax credit shall include:
- 5 (A) A detailed description of the infrastructure
6 project;
- 7 (B) A preliminary budget;
- 8 (C) A complete detailed business plan and market
9 analysis;
- 10 (D) Estimated start and completion dates; and
- 11 (E) If the application is incomplete, additional
12 information may be requested prior to further
13 action by the director of taxation.
- 14 (7) An application fee shall be submitted with the
15 application for a qualified media infrastructure
16 project tax credit based on the following:
- 17 (A) _____ per cent times the estimated total
18 incentive tax credits; and
- 19 (B) The minimum application fee shall be four hundred
20 dollars and the maximum application fee shall be
21 five thousand dollars; and



1 (8) Prior to any final certification of a tax credit for
2 an infrastructure project that has been initially
3 certified by the department of taxation, the applicant
4 for the infrastructure project tax credit shall submit
5 to the director of taxation an audit of the
6 expenditures audited and certified by an independent
7 certified public accountant as determined by rule.
8 Upon approval of the audit, the director of taxation
9 shall issue a final tax credit certification letter
10 indicating the amount of tax credits certified for the
11 state-certified infrastructure project to the
12 investors. Bank loan finance fees applicable to the
13 qualified media infrastructure project expenditures,
14 as certified by the director of taxation, and any
15 general excise taxes that have been paid on the bank
16 loan finance fees and remitted to the State may be
17 included as part of the tax credit.

18 There shall be a qualified local crew training program
19 rebate that shall be equal to _____ per cent of the hourly wages
20 of each resident participant in a qualified local crew training
21 program, and if incurred by a qualified production in any county
22 of the State, shall be reimbursed up to the first _____



1 physically worked by the qualifying crew member in a specialized
2 craft position.

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

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

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

17 The basis for eligible property for depreciation of
18 accelerated cost recovery system purposes for state income taxes
19 shall be reduced by the amount of credit allowable and claimed.
20 Subsections (d) through (l) shall apply only to the production
21 tax credits set forth in subsection (a).



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

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

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

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



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

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

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



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

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

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

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



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

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

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

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

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

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



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

6 ~~[(j)]~~ (l) Total production tax credits claimed under this
7 section per qualified production shall not [exceed \$8,000,000.]
8 be capped; provided that the qualified media infrastructure
9 project income tax credits shall be capped at \$ _____ in the
10 aggregate.

11 (m) A taxpayer eligible to claim a tax credit under this
12 section may assign all or a portion of a tax credit under this
13 section to any assignee. A taxpayer may claim a portion of a
14 tax credit and assign the remaining amount. A tax credit
15 assignment under this section shall be irrevocable. The tax
16 credit assignment under this subsection shall be made on a form
17 prescribed by the director of taxation. A taxpayer claiming a
18 tax credit under this section shall send a copy of the completed
19 assignment form to the department of taxation in the tax year in
20 which the assignment is made and shall attach a copy of the form
21 to the tax return on which the tax credit is claimed.



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

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

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

7 "Commercial":

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

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



1 "Director" means the director of taxation.

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

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

16 "Qualified local crew training program" means the
17 development and operation of a training program for State job
18 creation with a focus on film, video, television and digital
19 media production or post-production, with a budget of \$1,000,000
20 or greater. Commercials or other short form formats, with a
21 shooting schedule of less than eighteen days shall be excluded
22 from participation.



1 "Qualified media infrastructure project" means the
2 development, construction, renovation, or operation of a film,
3 video, television, or media production or post-production
4 facility and the immovable property and equipment related
5 thereto, or any other facility which supports and is a necessary
6 component of such proposed infrastructure project, that is
7 located in an county of the State; provided that the facility
8 may include a movie theater or other commercial exhibition
9 facility to assist in offsetting operating costs of the
10 production or postproduction facility, but shall not include a
11 facility used to produce pornographic matter or a pornographic
12 performance.

13 "Qualified production":

14 (1) Means a production, with expenditures in the State,
15 for the total or partial production of a feature-
16 length motion picture, short film, made-for-television
17 movie, commercial, music video, interactive game,
18 television series pilot, single season (up to twenty-
19 two episodes) of a television series regularly filmed
20 in the State (if the number of episodes per single
21 season exceeds twenty-two, additional episodes for the
22 same season shall constitute a separate qualified



1 production), television special, single television
2 episode that is not part of a television series
3 regularly filmed or based in the State, national
4 magazine show, or national talk show. For the
5 purposes of subsections (d) and (j), each of the
6 aforementioned qualified production categories shall
7 constitute separate, individual qualified productions;
8 and

9 (2) Does not include: daily news; public affairs programs;
10 non-national magazine or talk shows; televised
11 sporting events or activities; productions that
12 solicit funds; productions produced primarily for
13 industrial, corporate, institutional, or other private
14 purposes; and productions that include any material or
15 performance prohibited by chapter 712.

16 "Qualified production costs" means the costs incurred by a
17 qualified production within the State that are subject to the
18 general excise tax under chapter 237 or income tax under this
19 chapter and that have not been financed by any investments for
20 which a credit was or will be claimed pursuant to section
21 235-110.9. Qualified production costs include but are not
22 limited to:



- 1 (1) Costs incurred during preproduction such as location
2 scouting and related services;
- 3 (2) Costs of set construction and operations, purchases or
4 rentals of wardrobe, props, accessories, food, office
5 supplies, transportation, equipment, and related
6 services;
- 7 (3) Wages or salaries of cast, crew, and musicians;
- 8 (4) Costs of photography, sound synchronization, lighting,
9 and related services;
- 10 (5) Costs of editing, visual effects, music, other post-
11 production, and related services;
- 12 (6) Rentals and fees for use of local facilities and
13 locations;
- 14 (7) Rentals of vehicles and lodging for cast and crew;
- 15 (8) Airfare for flights to or from Hawaii, and interisland
16 flights;
- 17 (9) Insurance and bonding;
- 18 (10) Shipping of equipment and supplies to or from Hawaii,
19 and interisland shipments; [and]
- 20 (11) Costs for equipment or items not readily obtainable in
21 the State that are passed through a qualified resident



1 vendor and upon which a mark-up and general excise tax
2 are paid;

3 (12) Bank loan finance fees applicable to the qualified
4 production expenditures as finally certified by the
5 director of taxation to the extent that a general
6 excise tax is paid and remitted to the State. For the
7 purposes of this section, banks providing loans to
8 qualified productions shall be considered service
9 vendors that are providing services to a production
10 company where the motion picture film product consists
11 in part of the value of services provided and shall be
12 subject to the one-half of one per cent tax rate under
13 section 237-18(c); and

14 ~~[(11)]~~ (13) Other direct production costs specified by the
15 department in consultation with the department of
16 business, economic development, and tourism.

17 "Qualified special or visual effects and animation
18 production" means special and or visual effects and animation
19 created primarily with digital technologies for designing,
20 modeling, rendering, lighting, painting, greenscreen, animating,
21 and compositing for qualified productions."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2050;
4 provided that this Act shall apply to taxable years beginning
5 after December 31, 2010.

6



Report Title:

Motion Picture, Digital Media, and Film Production Tax Credits

Description:

Amends the motion picture, digital media, and film production tax credits to increase the tax credits to unspecified percentages and dollar amounts and to provide additional non-refundable tax credits for qualified media infrastructure projects in certain qualifying counties; provides an additional tax credit for qualified special or visual effects and animation production costs; raises the tax credit caps to unspecified amounts. Effective 7/1/2050. (SD1)

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