
A BILL FOR AN ACT

RELATING TO DIGITAL MEDIA INFRASTRUCTURE.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§235- Media infrastructure project tax credit. (a) In
5 addition to the credits described in section 235-17, beginning
6 on or after July 1, 2013, and ending prior to January 1, 2016,
7 there shall be allowed to each taxpayer subject to the taxes
8 imposed by this chapter, a media infrastructure project tax
9 credit that shall be deductible from the taxpayer's net income
10 tax liability, if any, imposed by this chapter for the taxable
11 year in which the credit is properly claimed. The amount of the
12 credit shall be equal to per cent of the qualified
13 costs incurred for qualified media infrastructure projects
14 situated in West Oahu or on the most populous island in a county
15 with a population between 100,000 and 175,000.

16 For the purposes of this section, "net income tax
17 liability" means net income tax liability reduced by all other
18 credits allowed under this chapter.



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

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

10 (b) The following shall apply to the qualified media
11 infrastructure project tax credit described in subsection (a):

12 (1) The base investment for a qualified media
13 infrastructure project shall be in excess of
14 \$ _____ ;

15 (2) The qualified media infrastructure project tax credit
16 shall be nonrefundable. The portion of the tax credit
17 that exceeds the tax liability of the taxpayer for the
18 tax year in which the credit was earned may be carried
19 forward to offset net income tax liability in
20 subsequent tax years for a period not to exceed ten
21 taxable years or until exhausted, whichever occurs
22 first. The director of taxation may require the tax



1 credit to be taken in the tax period in which the
2 credit is earned or may structure the tax credit to
3 provide that only a portion of the tax credit be taken
4 over the course of two or more years;

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

8 (4) If all or a portion of an infrastructure project is a
9 facility that may be used for other purposes unrelated
10 to production or post-production activities, then the
11 project shall be approved only if a determination is
12 made that the multiple-use facility will support and
13 will be necessary to secure production or post-
14 production activity for the production and post-
15 production facility and the applicant provides
16 sufficient contractual assurances that the facility
17 will be used as a state-of-the-art production or post-
18 production facility, or as a support and component
19 thereof, for the useful life of the facility; provided
20 that no tax credits described in subsection (a) shall
21 be earned on a multiple-use facility until the
22 production or post-production facility is complete;



- 1 (5) Tax credits for qualified media infrastructure
2 projects shall be earned only as follows:
- 3 (A) Construction of the infrastructure project shall
4 begin within six months of the initial
5 certification and shall be per cent
6 complete within a year time frame;
- 7 (B) Expenditures shall be certified by the department
8 of business, economic development, and tourism,
9 and credits shall not be earned until that
10 certification is made; and
- 11 (C) For purposes of allowing tax credits against
12 state income tax liability, the tax credits shall
13 be deemed earned at the time the expenditures are
14 made; provided that all requirements of this
15 subsection have been met and the tax credits have
16 been certified;
- 17 (6) For state-certified infrastructure projects, an
18 application for a qualified media infrastructure
19 project tax credit shall be submitted to the
20 department of business, economic development, and
21 tourism, which shall include:



- 1 (A) A detailed description of the infrastructure
- 2 project;
- 3 (B) A preliminary budget;
- 4 (C) A complete detailed business plan and market
- 5 analysis;
- 6 (D) Estimated start and completion dates;
- 7 (E) A letter issued by the mayor and council of the
- 8 county in which the infrastructure project is to
- 9 be located indicating that the project has been
- 10 approved; and
- 11 (F) If the application is incomplete, additional
- 12 information may be requested prior to further
- 13 action by the department of business, economic
- 14 development, and tourism;

- 15 (7) An application fee shall be submitted with the
- 16 application for a qualified media infrastructure
- 17 project tax credit. The amount of the fee shall be
- 18 equal to _____ per cent of the estimated total
- 19 incentive tax credits; provided that the minimum
- 20 application fee shall be \$ _____ and the maximum
- 21 application fee shall be \$ _____ ; and



1 (8) Prior to any final certification of a tax credit for a
2 state-certified media infrastructure project, the
3 applicant for the qualified media infrastructure
4 project tax credit shall submit to the department of
5 business, economic development, and tourism an audit
6 of the expenditures that is performed and certified by
7 an independent certified public accountant pursuant to
8 rule. Upon approval of the audit, the department of
9 business, economic development, and tourism shall
10 issue a final tax credit certification letter
11 indicating the amount of the tax credit certified for
12 the state-certified infrastructure project to the
13 taxpayer and investors. Bank loan finance fees
14 applicable to the qualified media infrastructure
15 project expenditures, as certified by the department
16 of business, economic development, and tourism, and
17 any general excise taxes that have been paid on the
18 bank loan finance fees and remitted to the State shall
19 be considered as a qualifying expense for the purpose
20 of the tax credit. The taxpayer for each qualified
21 media infrastructure project shall file the letter
22 with the taxpayer's tax return for the qualified media



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

7 (c) Any taxpayer eligible to claim a tax credit under
8 subsection (a) shall:

9 (1) File an annual progress report with the department of
10 business, economic development, and tourism on a
11 calendar basis, which shall include the following
12 information:

13 (A) Percentage of completion of each qualified media
14 infrastructure project;

15 (B) Amount of moneys expended on, and amount
16 remaining to complete, each qualified media
17 infrastructure project; and

18 (C) Tax and labor clearances;

19 (2) Deliver to the department of business, economic
20 development, and tourism a performance bond, in a form
21 prescribed by the department of business, economic
22 development, and tourism by rule, executed by a surety



1 company authorized to do business in this State or
 2 otherwise secured in a manner satisfactory to the
 3 department of business, economic development, and
 4 tourism, in an amount equal to _____ per cent of
 5 total projected expenditures determined upon initial
 6 certification; and

7 (3) Provide either of the following:

8 (A) Pledge of a lien on the qualified media
 9 infrastructure project in favor of the State in
 10 the amount of \$ _____ ; provided that the lien
 11 shall expire five years after completion of the
 12 project; or

13 (B) Collateral security in the amount of \$ _____ ;
 14 provided that the collateral security shall be
 15 released five years after completion of the
 16 qualified media infrastructure project.

17 (d) Any taxpayer eligible to claim a qualified media
 18 infrastructure project tax credit under subsection (a) shall
 19 file with the department of business, economic development, and
 20 tourism an annual report no later than March 1 following each
 21 taxable year for which the credit is claimed. The report shall
 22 include the following information:



- 1 (1) The amount of general excise tax paid under chapter
- 2 237;
- 3 (2) The amount of transient accommodations tax paid under
- 4 chapter 237D;
- 5 (3) The amount of tax credits claimed under this section;
- 6 (4) Gross proceeds of each project;
- 7 (5) Number of full-time employees employed on each
- 8 qualified media infrastructure project;
- 9 (6) Number of part-time employees employed on each
- 10 qualified media infrastructure project;
- 11 (7) Number of independent contractors contracted to work
- 12 on each qualified media infrastructure project;
- 13 (8) Amount disbursed as payroll in the State on each
- 14 qualified media infrastructure project; and
- 15 (9) List of job classifications with average wage level.

16 (e) For purposes of this section:
 17 "Production" and "post-production" shall have the same
 18 meaning as in section 235-17.

19 "Qualified media infrastructure project" means the
 20 development, construction, renovation, or operation of a film,
 21 video, television, or media production or post-production
 22 facility and the immovable property and equipment related



1 thereto, or any other facility that supports and is a necessary
 2 component of the proposed infrastructure project, that is
 3 located in the State; provided that the facility may include a
 4 movie theater or other commercial exhibition facility to assist
 5 in offsetting operating costs of the production or post-
 6 production facility, but shall not include a facility used to
 7 produce pornographic matter or a pornographic performance.

8 (f) A taxpayer shall not be prohibited from claiming the
 9 media infrastructure project tax credit for qualifying
 10 investments made prior to the reenactment of section 235-17
 11 pursuant to section 4 of Act 88, Session Laws of Hawaii 2006.

12 A taxpayer may claim the media infrastructure project tax
 13 credit for investments made on a qualified media infrastructure
 14 project prior to January 1, 2016; provided that:

15 (1) Construction of the media infrastructure project shall
 16 commence prior to January 1, 2016; and

17 (2) The claim for the media infrastructure project tax
 18 credit shall be properly filed on or before the end of
 19 the twelfth month following the close of the taxable
 20 year for which the tax credit may be claimed.

21 Failure to comply with either of the foregoing provisions shall
 22 constitute a waiver of the right to claim the tax credit.



1 (g) If at the close of any taxable year:

2 (1) The qualified media infrastructure project no longer
3 qualifies for the tax credit established under this
4 section;

5 (2) The qualified media infrastructure project or an
6 interest in the qualified media infrastructure project
7 has been sold by the taxpayer making a base investment
8 in the qualified media infrastructure project; or

9 (3) The taxpayer has withdrawn the taxpayer's base
10 investment wholly or partially from the qualified
11 media infrastructure project,

12 the tax credit claimed under this section shall be recaptured.

13 The recapture shall be equal to per cent of the
14 amount of the total tax credit claimed under this section in the
15 preceding five taxable years. The amount of the tax credit
16 recaptured shall apply only to the investment in the particular
17 qualified media infrastructure project that meets the conditions
18 of paragraph (1), (2), or (3). The amount of the recaptured tax
19 credit determined under this subsection shall be added to the
20 taxpayer's tax liability for the taxable year in which the
21 recapture occurs under this subsection.



1 (h) Failure to complete a qualified media infrastructure
2 project for which a tax credit is claimed under subsection (a)
3 within five years of initial certification shall result in
4 ineligibility to claim the tax credit."

5 SECTION 2. The department of taxation shall submit an
6 annual report to the legislature twenty days prior to each
7 regular session beginning with the 2014 regular session. The
8 report shall contain a cost benefit analysis of the tax credit
9 established in this Act.

10 The department of taxation shall report the data collected
11 under this section along with a cumulative total of tax credits
12 granted for each qualified media infrastructure project.

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2050, and
15 apply to taxable years beginning after December 31, 2012.



Report Title:

Media Infrastructure Project Tax Credit

Description:

Establishes a media infrastructure project tax credit for qualified media infrastructure projects in West Oahu or on the most populous island in a county with a population between 100,000 and 175,000. Provides for recapture of the media infrastructure project tax credit in certain circumstances. Requires annual report to Legislature. Effective 07/01/2050.
(SD2)

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