

JAN 20 2012

S.B. NO. 2463

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The purpose of this Act is to promote the
2 motion picture, digital media, and film production industry in
3 Hawaii by:

4 (1) Establishing a motion picture, digital media, and film
5 production infrastructure tax credit of qualified
6 infrastructure costs;

7 (2) Requiring the expenditure of at least \$10,000,000 in
8 qualified infrastructure costs; and

9 (3) Providing for an application fee of \$10,000 to the
10 Hawaii film office.

11 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§235- Motion picture, digital media, and film
15 production infrastructure income tax credit. (a) Any law to
16 the contrary notwithstanding, there shall be allowed to each
17 taxpayer subject to the taxes imposed by this chapter, an income
18 tax credit which shall be deductible from the taxpayer's net



1 income tax liability, if any, imposed by this chapter for the
2 taxable year in which the credit is properly claimed. The
3 amount of the credit shall be per cent of the qualified
4 infrastructure costs incurred by a qualified taxpayer in any
5 county of the State.

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

12 (b) The credit allowed under this section shall be claimed
13 against the net income tax liability for the taxable year. For
14 the purposes of this section, "net income tax liability" means
15 net income tax liability reduced by all other credits allowed
16 under this chapter.

17 (c) If the tax credit under this section exceeds the
18 taxpayer's income tax liability, the excess of credits over
19 liability shall be refunded to the taxpayer; provided that no
20 refunds or payment on account of the tax credits allowed by this
21 section shall be made for amounts less than \$1. All claims,
22 including any amended claims, for tax credits under this section



1 shall be filed on or before the end of the twelfth month
2 following the close of the taxable year for which the credit may
3 be claimed. Failure to comply with the foregoing provision
4 shall constitute a waiver of the right to claim the credit.

5 (d) To qualify for this tax credit, a qualified
6 infrastructure project shall:

7 (1) Meet the definition of a qualified infrastructure
8 project specified in subsection (1);

9 (2) Have qualified infrastructure costs totaling at least
10 \$10,000,000; and

11 (3) Provide evidence of reasonable efforts to hire Hawaii
12 residents.

13 (e) To receive the tax credit, the taxpayer shall first
14 prequalify the infrastructure project for the credit by
15 registering with the department of business, economic
16 development, and tourism during the development stage. Failure
17 to comply with this provision may constitute a waiver of the
18 right to claim the credit.

19 (f) If all or a portion of an infrastructure project is a
20 facility that may be used for other purposes unrelated to
21 production or post-production activities, then the project shall
22 be approved only if a determination is made that the multiple-



1 use facility will support and will be necessary to secure
2 production or post-production activity.

3 The taxpayer may also request a comfort ruling from the
4 department of taxation regarding the applicability of the tax
5 credit to a specific qualified infrastructure project.

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

12 (h) An application fee of \$10,000 shall be payable to the
13 department of business, economic development, and tourism Hawaii
14 film office and shall be submitted with the application for a
15 qualified infrastructure project tax credit.

16 (i) Every taxpayer claiming a tax credit under this
17 section for a qualified infrastructure project shall, no later
18 than ninety days following the end of each taxable year in which
19 qualified production costs were expended, submit a written,
20 sworn statement to the department of business, economic
21 development, and tourism, identifying:



(1) All qualified infrastructure costs, if any, incurred in the previous taxable year;

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

(3) The number of total employees hired versus the number of Hawaii residents hired, by job category and by county.

(j) The department of business, economic development, and tourism shall:

(1) Maintain records of the names of the taxpayers and qualified infrastructure projects thereof claiming the tax credits under subsection (a);

(2) Obtain and total the aggregate amounts of all qualified infrastructure costs per qualified infrastructure project per taxable year; and

(3) Provide a letter to the director of taxation specifying the amount of the tax credit per qualified infrastructure project for each taxable year that a tax credit is claimed and the cumulative amount of the tax credit for all years claimed.

(k) Upon each determination required under this subsection, the department of business, economic development,



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

12 (1) For the purposes of this section:

13 "Qualified infrastructure costs" means the total costs
14 incurred by a qualified infrastructure project within the State
15 that are subject to the general excise tax under chapter 237 or
16 income tax under this chapter and that have not been financed by
17 any investments for which a credit was or will be claimed
18 pursuant to section 235-110.9. Qualified infrastructure costs
19 shall not include the cost of purchasing or leasing real
20 property.

21 "Qualified infrastructure project" means a construction
22 project in the State, for the development, construction, or



1 renovation of a film, video, television, or media production or
2 post-production facility and the immovable property and
3 equipment related thereto, or any other facility that supports
4 and is a necessary component of such infrastructure project."

5 SECTION 3. New statutory material is underscored.

6 SECTION 4. This Act, upon its approval, shall apply to
7 taxable years beginning after December 31, 2011.

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INTRODUCED BY: Carol Fikema



S.B. NO. 2463

Report Title:

Taxation; Motion Picture, Digital Media, and Film Production
Infrastructure Tax Credit

Description:

Establishes a motion picture, digital media, and film production infrastructure tax credit of an unspecified percentage of qualified infrastructure costs; requires qualified expenditure of at least \$10,000,000; provides for an application fee of \$10,000 to the department of business, economic development, and tourism Hawaii film office; applies to taxable years beginning after 12/31/2011.

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