
A BILL FOR AN ACT

RELATING TO FILM INFRASTRUCTURE TAX CREDIT.

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- Motion picture, digital media, and film
5 infrastructure tax credit. (a) There shall be allowed to each
6 taxpayer who:

7 (1) Is subject to the taxes imposed by this chapter; and

8 (2) Invests \$ or more in a qualified film

9 infrastructure project,
10 a nonrefundable tax credit that shall be deductible from the
11 taxpayer's net income tax liability, if any, imposed by this
12 chapter for the taxable year in which the credit is properly
13 claimed. The amount of the credit shall be per cent of the
14 eligible infrastructure costs made by the taxpayer in any county
15 of the State.

16 A qualified film infrastructure project occurring in more
17 than one county may prorate its expenditures based upon the



1 amounts spent in each county, if the population bases differ
2 enough to change 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) If a taxpayer sells, assigns, or otherwise transfers a
4 credit under this section to another taxpayer, the transferor
5 and transferee shall jointly submit written notification of the
6 transfer to the department of business, economic development,
7 and tourism no later than thirty days after the transfer. The
8 notification shall include the credit certificate number, date
9 of transfer, amount of the credit transferred, tax credit
10 balance before and after the transfer, tax identification
11 numbers for the transferor and transferee, and any other
12 information required by the director of taxation. After the
13 initial issuance of a tax credit, the credit may be sold,
14 assigned, or otherwise transferred not more than three times.
15 Failure to comply with this subsection will result in a
16 disallowance of the tax credit until there is full compliance on
17 both the part of the transferor and the transferee, and all
18 subsequent transferors and transferees. The department of
19 business, economic development, and tourism shall provide a copy
20 of the notification of assignment to the director of taxation
21 upon request.



1 No tax credits transferred pursuant to this subsection
2 shall be subject to a post-certification remedy; and the
3 department of business, economic development, and tourism and
4 director of taxation shall have no right, except in the case of
5 possible material misrepresentation or fraud, to conduct any
6 further or additional review, examination or audit of the
7 expenditures or costs for which the tax credits were issued.

8 (e) Before claiming a tax credit under this section, each
9 taxpayer shall prequalify for the credit by registering with the
10 department of business, economic development, and tourism during
11 the development or preproduction stage. The taxpayer
12 undertaking a qualified film infrastructure project shall apply
13 to the department of business, economic development, and tourism
14 for a film infrastructure tax credit certificate no later than
15 ninety days after the first expenses or costs are incurred, and
16 shall provide with the application the information as the
17 department of business, economic development, and tourism may
18 require to determine the project's eligibility as a qualified
19 film infrastructure project.

20 Each application for a film infrastructure tax credit
21 certificate shall include:



1 (1) A detailed description of the film infrastructure
2 project;

3 (2) A preliminary budget;

4 (3) Estimated completion date; and

5 (4) Other information as the department of business,
6 economic development, and tourism may require.

7 (f) The department of business, economic development, and
8 tourism may require an independent audit of all project costs
9 and expenditures before issuing a film infrastructure tax credit
10 certificate. If the department of business, economic
11 development, and tourism determines that the project has
12 eligible infrastructure costs, the department shall indicate the
13 amount of costs or expenditures that have been established to
14 the satisfaction of the department, and issue to the taxpayer a
15 film infrastructure tax credit certificate for investors
16 indicating the amount of tax credits available under this
17 section. The department of business, economic development, and
18 tourism shall provide a copy of the film infrastructure tax
19 credit certificate to the director of taxation, upon request.

20 (g) Before the issuance of a film infrastructure project
21 tax credit voucher to a taxpayer based upon the film



infrastructure tax credit certificate issued by the department
of business, economic development, and tourism, the taxpayer
undertaking the qualified film infrastructure project shall
provide the department with a description of the progress on the
project and an estimated completion date. The department of
business, economic development, and tourism may require an
independent audit of all project costs and expenditures before
the issuance of the film infrastructure tax credit voucher to a
taxpayer. No film infrastructure tax credit voucher shall be
issued before the qualified film infrastructure project is shown
to be one hundred per cent complete.

(h) No later than ninety days following the end of each
taxable year in which eligible infrastructure costs were
expended, each taxpayer claiming a tax credit pursuant to this
section shall submit a written, sworn statement to the
department of business, economic development, and tourism,
together with a verification review by a qualified certified
public accountant using procedures prescribed by the department,
identifying:

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



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

3 (3) The number of total hires versus the number of local
4 hires by category and by county.

5 This information may be reported from the department of
6 business, economic development, and tourism to the legislature
7 in a redacted format pursuant to subsection (j) (5).

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

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

16 (1) Charge a reasonable administrative fee sufficient to
17 cover the department's costs to analyze applications
18 submitted under this section;

19 (2) Maintain records of the names of the taxpayers and
20 qualified film infrastructure project thereof claiming
21 the tax credits under this section;



1 (3) Obtain and total the aggregate amounts of all eligible
2 infrastructure costs per qualified film infrastructure
3 project and per qualified film infrastructure project
4 per taxable year;

5 (4) Provide a letter to the director of taxation
6 specifying the amount of the tax credit per qualified
7 film infrastructure project for each taxable year that
8 a tax credit is claimed and the cumulative amount of
9 the tax credit for all years claimed; and

10 (5) Submit a report to the legislature no later than
11 twenty days prior to the convening of each regular
12 session detailing the non-aggregated eligible
13 infrastructure costs that form the basis of the tax
14 credit claims and expenditures, itemized by taxpayer,
15 in a redacted format to preserve the confidentiality
16 of the taxpayers claiming the credit.

17 Upon each determination required under this subsection, the
18 department of business, economic development, and tourism shall
19 issue a letter to the taxpayer, regarding the qualified film
20 infrastructure project, specifying the eligible infrastructure
21 costs and tax credit amount qualified for in each taxable year a



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

9 (k) The total amount of tax credits allowed under this
10 section in any particular year shall be \$; however, if
11 the total amount of credits applied for in any year exceeds the
12 aggregate amount of credits allowed for that year under this
13 section, the excess shall be treated as having been applied for
14 in the three immediately subsequent taxable years and may be
15 claimed in those years.

16 (l) For the purposes of this section:

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



chapter. "Eligible infrastructure costs" include but are not limited to include:

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

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

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

(4) Fixtures and other equipment.

"Qualified film infrastructure project" means an infrastructure project undertaken in the State by an entity that:

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

(2) Is authorized to conduct business in the State;

(3) Is not in default on a loan made by the State or a loan guaranteed by the State, or has ever declared



1 bankruptcy under which an obligation of the entity to
2 pay or repay public funds was discharged as a part of
3 the bankruptcy; and

4 (4) Has been approved by the department of business,
5 economic development, and tourism as qualifying for a
6 film infrastructure tax credit under this section.

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

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

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

18 SECTION 2. New statutory material is underscored.

19 SECTION 3. This Act shall take effect on October 18, 2050,
20 and shall apply to taxable years beginning after December 31,
21 2021.



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 an unspecified amount on buildings, facilities, or
installations. Caps the credit at an unspecified amount per
year. Effective 10/18/2050. (HD1)

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