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GOVERNOR

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GARY S. SUGANUMA
DIRECTOR

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DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
S.B. No. 795, S.D.2, Relating to Taxes

BEFORE THE:
House Committee on Economic Development

DATE: Wednesday, March 22, 2023
TIME: 9:30 a.m.
LOCATION: State Capitol, Room 423

Chair Holt, Vice-Chair Lamosao, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 795, S.D.2, for your consideration.

S.B. 795, S.D.2, amends section 235-17(d), Hawaii Revised Statutes (HRS), relating to the motion picture, digital media, and film production income tax credit ("film credit"), by obligating taxpayers to provide evidence of reasonable efforts to comply with all applicable requirements under title 14, HRS, and requiring that taxpayers be given notice and an opportunity to cure any of the requirements in subsection (d). The bill has a defective effective date of January 6, 2050.

The Department appreciates that a proviso was added to the end of section 235-17(d), HRS, by the Senate Committee on Ways and Means, as requested by the Department, to clarify that nothing in subsection (d) waives any act required under section 235-17, HRS.

The Department notes that it is able to administer this measure by January 1, 2023.

Thank you for the opportunity to provide comments on this measure.

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM
KA ʻOIHANA HOʻOMOHALA PĀʻOIHANA, ʻIMI WAIWAI A HOʻOMĀKAʻIKAʻI

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Statement of
CHRIS J. SADAYASU
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

Wednesday, March 22, 2023
9:30 AM
State Capitol, Conference Room 423

In consideration of
SENATE BILL 795, SD2
RELATING TO TAXES.

Chair Holt, Vice Chair Lamosao, and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) supports SB 795, SD2 that requires productions to provide evidence of reasonable efforts to comply with all applicable requirements to qualify for the motion picture, digital media, and film production income tax credit and provides filers the opportunity to cure and remedy required aspects of Act 217, SLH 2022, HRS 235-17, Section 1 (d) of the Hawaiʻi Motion Picture, Digital Media and Film Production Income Tax Credit program.

This measure addresses the withholding and related aspects which went into effect January 1, 2023, requiring all filers to pay monthly the required general excise tax withholding for loan-out and payroll companies during the production timeframe. DBEDT conducted briefings with industry and DoTAX to address multiple questions for this requirement, including a demonstration of the new online system for reporting. The opportunity to cure provides industry the ability to ensure compliance of the loan-out companies and inserts language which further clarifies the ability to cure within the 90-day time period as prescribed in the law.

The motion picture, digital media, and film production income tax credit program is a critical tool for developing Hawaiʻi's film industry and since its inception in 2006, the incentive has grown from $100M-a-year industry to a $400M+ year economic driver, and with it, more than 4,000 direct and induced jobs annually.

A thriving film and digital media industry has broadened Hawaiʻi's tax base, helped to strengthen the state's economy, created high-paying jobs in the creative sector, and made Hawaiʻi a production center of the Pacific.

Thank you for the opportunity to testify.

IATSE LOCAL 665

FILM, TELEVISION, STAGE, PROJECTION AND TRADESHOWS
Since 1937

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES, MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES, ITS TERRITORIES AND CANADA, AFL-CIO, CLC

Thirty-Second Legislature, State of Hawai'i
House Committee on Economic Development

Testimony by IATSE 665
March 22nd, 2023

S.B. 795 SD 2 - RELATING TO TAXES

Aloha Chair Holt, Vice Chair Lamosao, and Members of the House Committee,

My name is Tuia'ana Scanlan, president of IATSE Local 665, the union representing technicians in the entertainment industry in Hawai'i. **Local 665 supports SB795 SD 2** relating to taxes.

We depend on the motion picture, digital media, and film production income tax credit to remain competitive in the global market. It is equally important to our union and our industry that the recipients of this incentive provide evidence of compliance with all applicable qualifying requirements. Transparency is key in the fair administration of this incentive. It's for these reasons that we support SB 795 SD 2.

In order to strengthen the positive impacts of the Film and TV industry in Hawai'i, IATSE Local 665 asks your committee to support SB 795 SD 2. Thank you for the opportunity to testify.

In Solidarity,

Tuia'ana Scanlan
President, IATSE 665
he/him/his

501 SUMNER STREET ♦ SUITE #610 ♦ HONOLULU, HAWAII 96817 ♦ (808) 596-0227 ♦ FAX (808) 591-8213

MPA

Memo in Support of Senate Bill 795

House Committee on Economic Development

The Motion Picture Association ("MPA") and its member companies support Senate Bill 795, S.D. 2, as proposed to be amended in this Committee, legislation regarding the film and television production tax credit program to clarify the production and taxpayer's obligations and responsibilities under the program. MPA's members[*] are the leading producers and distributors of filmed entertainment across all platforms, including motion picture theaters, cable, satellite, broadcast and internet exhibition.

In 2022, Hawaii enacted amendments to the Motion Picture, Digital Media and Film Production Tax Credit program, Act 217, SLH 2022, HRS 235-17. Among other provisions, the amendments imposed new requirements regarding the employer's responsibility to withhold and remit in accordance with the General Excise Tax ("GET") for loan-out corporations. The employer, or payroll services company on behalf of the employer, cannot remit amounts withheld to the Department of Taxation ("DoTAX") without a GET identification number provided by the loan-out corporation. The language of the 2022 amendments requires that the employer "be compliant" with all requirements. However, if the loan-out corporation does not provide the employer, or payroll services company, with a GET identification number, the employer could be determined to be out of compliance with this requirement, potentially putting the tax credit at risk.

This bill amends the 2022 law to allow the employer to make reasonable efforts to comply with all the requirements of the Tax Code, including the film and television production tax credit program, and to have an opportunity to rectify any compliance issues, should they arise. This will allow employers, and payroll services companies, to work with the loan-out corporations to encourage them to

[*] MPA member companies include: The Walt Disney Studios Motion Pictures; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

obtain a GET identification number. And the bill will ensure that productions will not be at risk to be found not compliant over a minor technical issue.

When this bill was considered by the Senate Ways and Means Committee, it was amended, at the request of DoTAX, to clarify that the requirements set forth in the tax credit program, such as the timeframe for submitting final audit information, are not deemed waived by the opportunity to cure provision. MPA and DoTAX further agreed to add the amendments in this Committee to clarify that nothing is intended to waive any requirements of the production tax credit, by specifically referencing that section of the code, section 235-17, and to specifically mention the GET section of the law, chapter 237, as a provision for which the opportunity to cure should be recognized.

For these reasons, MPA supports SB 795 and urges the Members of the Committee to support the bill.

March 21, 2023

ISLAND
FILM GROUP

House of Representatives
The Thirty-Second Legislature
Regular Session of 2023

COMMITTEE ON ECONOMIC DEVELOPMENT
Rep. Daniel Holt, Chair
Senator Rachele F. Lamosao, Vice Chair

RE: SB 795 SD2 RELATING TO TAXES

Date: Wednesday, March 22, 2023
Time: 9:30 a.m.
Conference Room 423 & Videoconference
State Capitol
415 South Beretania Street

March 21, 2023

From: Roy Tjioe and Ricardo Galindez
Island Film Group
99-1245 Halawa Valley St.
Aiea, HI 96701
808-536-7955

Aloha Chair Holt, Vice Chair Lamosao, and Members of the Committee:

Our Background

Island Film Group is a locally owned and operated production company. We began working in Hawaii's film and television industry in 2001 as attorneys at Goodsill Anderson Quinn & Stifel, where we represented filmmakers and other production companies. Since our formation of Island Film Group in 2007, we have been working full-time as producers of feature films such as "Princess Ka`iulani" and "Soul Surfer", network and cable television movies and series, as well as a variety of commercial productions.

We SUPPORT SB 795 SD2, which allows the production claiming the tax credit to provide evidence of reasonable efforts to comply with all applicable requirements under title 14, as opposed to the current language which could be used to unfairly penalize productions that do not strictly comply with the requirements despite their good faith efforts to do so.

We SUPPORT the intent of the proposed language providing for notice and an opportunity to cure any of the requirements for claiming the tax credit. We respectfully request, however, that the term "taxpayer" be replaced with "production" since the statutory section and indeed the film tax credit itself focuses instead on the production and not the taxpayer. As such, we propose that the language in SB 795 SD2, page 2, lines 14 and 15, be revised to read as follows:

"; provided that a **production** shall be given notice and an opportunity to cure any of the requirements of this subsection." (emphasis added.)

Me ke aloha,

Roy Tjioe and Ricardo Galindez
Co-Founders
Island Film Group
Honolulu, Hawaii

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Motion Picture, Digital Media, and Film Production Income Tax Credit; Opportunity to Cure Deficiencies

BILL NUMBER: SB 795 SD 2

INTRODUCED BY: Senate Committee on Ways and Means

EXECUTIVE SUMMARY: Relaxes the current requirement that a production comply with "all applicable requirements" under the tax laws to "provide evidence of reasonable efforts to comply." Requires taxpayers be given notice and an opportunity to cure requirements for the motion picture, digital media, and film production income tax credit.

SYNOPSIS: Amends section 235-17(d), HRS, to change the requirement that a qualified production "Be compliant with all applicable requirements under title 14, including tax return filing and payments" to "Provide evidence of reasonable efforts to comply" with those requirements.

Adds a proviso that a taxpayer shall be given notice and an opportunity to cure any of the requirements in section 235-17(d), provided further that nothing in subsection (d) shall be interpreted as waiving any act required by section 235-17.

EFFECTIVE DATE: January 6, 2050.

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state's general excise tax on goods and services used by film producers.

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to $8 million per qualified production. Act 89, SLH 2013, increased the motion picture, digital media, and film production tax credit from 15% to 20% for the costs incurred in a county with a population over 700,000 and from 20% to 25% for costs incurred in a county with a population of 700,000 or less. Act 89 also increased the total tax credits that may be claimed per qualified production from $8 million to $15 million. Act 143, SLH 2017, imposed a statewide cap on such credits of $35 million; Act 275, SLH 2019, increased the statewide cap to $50 million.

Act 217, SLH 2022, increased the credit percentage for Oahu production costs from 20% to 22% and Neighbor Island production costs from 25% to 27%, but it also inserted two additional requirements in subsection (d), namely that a production "Be compliant with all applicable requirements under title 14, including tax return filing and payments; and … Provide complete responses to the department of taxation’s inquiries and document requests, in the form prescribed by the department, no later than ninety days from the inquiry or request.”

At the time the 2022 amendment was passed, we were concerned that these new requirements could be used to disqualify a production from all credits for relatively minor issues such as a single late return or failure to respond to a Department inquiry made informally or by mail to an address that was no longer effective.

We view the amendments by this bill as a way to restore some sanity to the administration of this credit.

Digested: 3/20/2023

SB-795-SD-2
Submitted on: 3/21/2023 9:25:57 AM
Testimony for ECD on 3/22/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Angela Laprete	Individual	Support	Written Testimony Only

Comments:

Representative Holt, Vice Chair Lamosao and members of the committee:

I am testifying in support of SB795 with hope of elevating our industry to the fullest potential it can be. I thought I had sumibtted my testimony last night but it seems it didn't go through. If it did, apologies for the duplication. I feel the following points are at utmost priority -

1) Lift the **tax cap** altogether or raise it to $75 million AND double the **per project cap** from $17million to $34million. In order to compete with other states and countries and keeping a production here the whole time (instead of a partial shoot), the per project cap really needs to be reviewed. That affects a big budgeted production (like "Chief of War") to cap out early and have to shoot elsewhere. There are many factors to why they had to leave but if they have a 200 million budget and only 80 million is spent in Hawaii, just use this show as an example as what could've been. And, this is just one show. COW employed hundreds to thousdands of locals on Oahu, Big Island and Maui. More shows mean more opportunites for employment.

2) Aligning with #1, Hawaii needs to **build infrastructure** statewide. The state is years behind in having built another film studio(s). We've "made do" on shows that come in and out and temporarily retrofit a space for their production needs and office and warehouse space. We need additional turnkey operations in place for studios to consider. Other infrascture include a water tank for shooting water work in a contained environment instead of open ocean that is unpredictable. It could also be used for training in water safety which is a big component for Hawaii (Navy Seals, underwater diving etc) .The current tank is hiding under a building at Diamond Head and hasn't been used for years. Warehouse spaces could be turned into training ground for stunts, master classes, etc. Shooting on the neighbor islands is very expensive and 27% doesn't go a long way. Shipping costs alone to bring in equipment, vehicles, etc and putting up cast and crew - there is major lack of infrastrcture on those islands. Bring the superferry back or find a way to help offset costs when productions want to go there.   They need the business!

3) **Training and work force devleopment** is crucial for our local crew and talent.   We do not currently have master classes in any craft happening on a continous basis. Talent and crew need to hone their craft and be ready to work, not wait for work to come and then train.

Also, when a new TV show comes in and brings their "distant hires" in dept head and key positions on a first season and/or 2nd season, there should be a mandate that they should be training our local union crew to help elevate them to higher positions and pay. By 3rd and 4th season, there should be a high percentage of local hiring in these positions (in addition to all other positions). To keep allowing "distant hires" to come in to these key positions is not fair to our local crew but studios will always look at credits first. How else do we elevate our local crew if we continue to allow it to happen? It's still happening now. The union should work with the studios/producers in structuring a program to do this. The state needs to impose an uptick and/or **incentivize** local hiring of crew, talent and vendors, otherwise, no change will happen. Many of these "distant hires" are also moving to Hawaii and stating that they are "local" hires. Not true - they stil get their per diem, housing, etc and are protected by the unions because their "home base" is still Los Angeles. Many shows that come in will tend to hire those people because of their credits and because they're already in Hawaii. This can also take away from our locals moving up the ranks and not being hired.

Internships for college/film students should be mandatory on all productions. "Chief of War" was the first to implement the IATSE indigenous internship program with 8 paid interns coming out of it in the union and ready to work. We also employed UH students and provided an opporutnity to work in the industry after they graduated. This is a win-win and should be enforced so our next generation have opportunities to stay home and find their career path.

5) I would love to push for a **cultural content incentive.** Most states and countries with indigenous culture have an incentive, it's shocking that Hawaii doesn't. An uptick like this could've potentially helped "Chief of War" shoot longer in Hawaii since they were easily maxed out on both tax caps. Once this show releases next year, it will be a game changer for Hawaiians and Polynesians worldwide, first of its kind. This will also help local filmmakers tell their stories (once vetted and qualifies under the guidelines) at all budget levels. This also puts our Hawaiian cultural advisors to work - we have about 10 hired on "Chief of War" - again, first show to do this.

FYI - I was able to visit NZ studios and meet with the film commisions for "Chief of War" earlier this year. Seeing it in person, Hawaii can do this! New Zealand has 2 film commissions, one being a domestic division that supports local storytelling and filmmakers on the smaller budgets. They get 40% tax credit with some other upticks. They invest in their own cutlure and storytelling which is why their content is very good and also their talent are tties op notch. They train and have opportunities for talent, directors, writers, crew, etc with their own TV network of soap operas and variety shows.

I am able to share this information being a Producer on the frontline and being in the business for over 25 years. I see the challenges all the time and although I always push hard with the local crew and vendor hiring, without a mandate or an added incentive, I can only do so much. I'm available for any questions or additional information on how our industry operates.

Mahalo for allowing me to have a voice. We have a wonderful film industry we can thrive even better on. We need changes to happen!