ACT 88

S.B. NO. 2570

A Bill for an Act Relating to Digital Media.

Be It Enacted by the Legislature of the State of Hawaii:

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

The film industry has generated approximately $160,000,000 in tax revenues for Hawaii since 1992. The State has long recognized the benefits of the film industry, and the dynamic synergy it brings to our top industry, tourism. The legislature has supported the growth of the film industry by developing the Hawaii film studio, establishing the academy for creative media at the University of Hawaii, streamlining the permitting process, and offering other incentives to attract film and television productions to the state.

The legislature also finds that there has been a dramatic increase in the number of state and local governments attempting to attract film productions. These jurisdictions have experienced dramatic increases in in-state spending and significant growth in workforce and infrastructure development. In New Mexico, production spending increased by $162,000,000 since the state's incentive legislation passed in 2002. Louisiana saw cumulative film expenditures rise to $800,000,000, since its legislation passed in 2002. New York City enjoyed an increase of $600,000,000 in new production and the creation of six thousand new jobs since the state and city passed the "Made in NY" fifteen per cent incentive package in August 2004 and January 2005, respectively. More productions in Hawaii would stimulate more direct and indirect tax revenue. According to the department of business, economic development, and tourism, the film industry averages $100,000,000 in direct spending annually, which generates $13,000,000 in direct and indirect tax revenues. If annual production expenditures could be tripled, the State would stand to gain more than $39,000,000 in annual tax revenues.

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

(1) Infuses significant amounts of new money into the economy, which is dispersed across many communities and businesses and which benefits a wide array of residents;
(2) Creates skilled, high-paying jobs;
(3) Has a natural dynamic synergy with Hawaii's top industry, tourism, and is used as a destination marketing tool for the visitor industry; and
(4) Is a clean, nonpolluting industry that values the natural beauty of Hawaii and its diverse multicultural population and wide array of architecture.

The legislature also finds that the industry has a strong desire to hire locally and invests in training and workforce development of island-based personnel. The three television series and one independent feature film that filmed in Hawaii in 2004 (North Shore, Hawaii, LOST, and Tides of War) had crews consisting of eighty-five to ninety per cent Hawaii residents. It is the intent of this Act to continue to encourage this industry practice of hiring a significant number of residents and to support training and educational initiatives and opportunities.

The legislature finds that series cancellations in recent years were due, in part, to the absence of cost-effective incentives that take into account the front-end budgeting methods normally used by the film industry and that allow for lower production costs. If this issue were addressed, a greater number of significant projects would be attracted to the islands and help build our local film industry infrastructure.

Therefore, it is the purpose of this Act to encourage the growth of the film industry by:

(1) Providing enhanced incentives that attract more film and television productions to Hawaii, thereby generating tax revenues;
(2) Providing jobs and income for residents;
(3) Supporting tourism and the natural beauty of Hawaii; and
(4) Enabling the state to compete effectively against other jurisdictions that offer similar incentives.

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

"**§235-17 Motion picture, digital media, and film production[~~;~~] income tax credit.** (a) [~~There~~] Any law to the contrary notwithstanding, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be [~~up to four~~]:

(1) Fifteen per cent of the qualified production costs incurred by a qualified production in any county of the State [~~in the production of motion picture or television films. The director of taxation shall specify by rule a schedule of allowable tax credits based on the principle that greater tax credits shall be allowed for greater benefits to the state economy.~~] with a population of over seven hundred thousand; or
(2) Twenty per cent of the qualified production costs incurred by a qualified production in any county of the State with a population of seven hundred thousand or less.

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

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

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

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

[~~(b) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be up to 7.25 per cent effective January 1, 1999, of the costs incurred in the State in the production of motion picture or television films for actual expenditures for transient accommodations. The director of taxation shall specify by rule a schedule of allowable tax credits based on the principle that greater tax credits shall be allowed for greater benefits to the state economy.~~

~~In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for production costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level.~~

~~(c)~~] (b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the [~~purpose~~] purposes of this section, ''net income tax liability'' means net income tax liability reduced by all other credits allowed under this chapter.

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

(d) To qualify for this tax credit, a production shall:

(1) Meet the definition of a qualified production specified in subsection (l);

(2) Have qualified production costs totaling at least $200,000;

(3) Provide the State, at a minimum, a shared-card, end-title screen credit, where applicable;

(4) Provide evidence of reasonable efforts to hire local talent and crew; and

(5) Provide evidence of financial or in-kind contributions or educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both, toward the furtherance of the local film and television and digital media industries.

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

(f) To receive the tax credit, the taxpayer shall first prequalify the production for the credit by registering with the department of business, economic development, and tourism during the development or preproduction stage. Failure to comply with this provision may constitute a waiver of the right to claim the credit.

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

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

(1) All qualified production costs as provided by subsection (a), 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 hires versus the number of local hires by category (i.e., department) and by county.

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

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

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

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

Upon each determination required under this subsection, the department of business, economic development, and tourism shall issue a letter to the taxpayer, regarding the qualified production, specifying the qualified production costs and the tax credit amount qualified for in each taxable year a tax credit is claimed. The taxpayer for each qualified production shall file the letter with the taxpayer's tax return for the qualified production to the department of taxation. Notwithstanding the authority of the department of business, economic development, and tourism under this section, the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

(j) Total tax credits claimed per qualified production shall not exceed $8,000,000.

(k) Qualified productions shall comply with subsections (d), (e), (f), and (h).

(l) For the purposes of this section:

"Commercial":

(1) Means an advertising message that is filmed using film, videotape, or digital media, for dissemination via television broadcast or theatrical distribution;

(2) Includes a series of advertising messages if all parts are produced at the same time over the course of six consecutive weeks; and

(3) Does not include an advertising message with Internet-only distribution.

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

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

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

"Qualified production":

(1) Means a production, with expenditures in the state, for the total or partial production of a feature-length motion picture, short film, made-for-television movie, commercial, music video, interactive game, television series pilot, single season (up to twenty-two episodes) of a television series regularly filmed in the state (if the number of episodes per single season exceeds twenty-two, additional episodes for the same season shall constitute a separate qualified production), television special, single television episode that is not part of a television series regularly filmed or based in the state, national magazine show, or national talk show. For the purposes of subsections (d) and (j), each of the aforementioned qualified production categories shall constitute separate, individual qualified productions; and

(2) Does not include: daily news; public affairs programs; non-national magazine or talk shows; televised sporting events or activities; productions that solicit funds; productions produced primarily for industrial,

corporate, institutional, or other private purposes; and productions that include any material or performance prohibited by chapter 712.

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

(1) Costs incurred during preproduction such as location scouting and related services;
(2) Costs of set construction and operations, purchases or rentals of wardrobe, props, accessories, food, office supplies, transportation, equipment, and related services;
(3) Wages or salaries of cast, crew, and musicians;
(4) Costs of photography, sound synchronization, lighting, and related services;
(5) Costs of editing, visual effects, music, other post-production, and related services;
(6) Rentals and fees for use of local facilities and locations;
(7) Rentals of vehicles and lodging for cast and crew;
(8) Airfare for flights to or from Hawaii, and interisland flights;
(9) Insurance and bonding;
(10) Shipping of equipment and supplies to or from Hawaii, and interisland shipments; and
(11) Other direct production costs specified by the department in consultation with the department of business, economic development, and tourism."

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

SECTION 4. This Act shall take effect on July 1, 2006; provided that:

(1) Section 2 of this Act shall apply to qualified production costs incurred on or after July 1, 2006, and before January 1, 2016; and
(2) This Act shall be repealed on January 1, 2016, and section 235-17, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved May 10, 2006.)