
A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

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

1 SECTION 1. The legislature finds that the film industry in
2 Hawaii is an important component of a diversified economy. The
3 legislature also finds that the motion picture, digital media,
4 and film production income tax credit has been effective in
5 stimulating the economy and creating quality jobs in a clean
6 industry while promoting Hawaii as a visitor destination.

7 The legislature further finds that the film production
8 process can extend over several years due to extensive planning
9 and development in the preproduction stage. The motion picture,
10 digital media, and film production income tax credit's current
11 sunset date of January 1, 2019, will discourage new productions
12 that may be in the development and preproduction phases at that
13 point in time.

14 The legislature also finds that additional amendments to
15 the motion picture, digital media, and film production income
16 tax credit are needed to ensure it continues to benefit the
17 State.



1 The purpose of this Act is to, among other things:

- 2 (1) Extend the motion picture, digital media, and film
3 production income tax credit for an additional seven
4 years to provide stability and economic incentive
5 predictability for the film industry, so Hawaii
6 remains competitive and comparable to other
7 jurisdictions in attracting qualified productions,
8 which generates additional revenue, jobs, and tourism
9 marketing exposure; and
- 10 (2) Amend the qualifications a production must meet in
11 order to claim the credit.

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

14 **"§235-17 Motion picture, digital media, and film**
15 **production income tax credit.** (a) Any law to the contrary
16 notwithstanding, there shall be allowed to each taxpayer subject
17 to the taxes imposed by this chapter, an income tax credit that
18 shall be deductible from the taxpayer's net income tax
19 liability, if any, imposed by this chapter for the taxable year
20 in which the credit is properly claimed. The amount of the
21 credit shall be:



- 1 (1) Twenty per cent of the qualified production costs
- 2 incurred by a qualified production in any county of
- 3 the State with a population of over seven hundred
- 4 thousand; or
- 5 (2) Twenty-five per cent of the qualified production costs
- 6 incurred by a qualified production in any county of
- 7 the State with a population of seven hundred thousand
- 8 or less.

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

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

19 If a deduction is taken under section 179 (with respect to
20 election to expense depreciable business assets) of the Internal



1 Revenue Code of 1986, as amended, no tax credit shall be allowed
2 for those costs for which the deduction is taken.

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

6 (b) The credit allowed under this section shall be claimed
7 against the net income tax liability for the taxable year. For
8 the purposes of this section, "net income tax liability" means
9 net income tax liability reduced by all other credits allowed
10 under this chapter.

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

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



- 1 (1) Meet the definition of a qualified production
2 specified in subsection [~~(l)~~] (m);
- 3 (2) Have qualified production costs totaling at least
4 \$200,000;
- 5 (3) Provide the State [~~at~~] a qualified Hawaii promotion,
6 which shall be at a minimum, a shared-card, end-title
7 screen credit, where applicable;
- 8 (4) Provide evidence of reasonable efforts to hire local
9 talent and crew; [~~and~~]
- 10 (5) Provide evidence when making any claim for products or
11 services acquired or rendered outside of this State
12 that reasonable efforts were unsuccessful to secure
13 and use comparable products or services within this
14 State;
- 15 [~~(5)~~] (6) Provide evidence of financial or in-kind
16 contributions or educational or workforce development
17 efforts, in partnership with related local industry
18 labor organizations, educational institutions, or
19 both, toward the furtherance of the local film and
20 television and digital media industries.



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

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

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

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



1 and tourism, together with a verification review by a qualified
2 certified public accountant using procedures prescribed by the
3 department of business, economic development, and tourism,
4 identifying:

5 (1) All qualified production costs as provided by
6 subsection (a), if any, incurred in the previous
7 taxable year;

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

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

12 This information may be reported from the department of
13 business, economic development, and tourism to the legislature
14 in redacted form pursuant to subsection (i)(4).

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

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



- 1 (2) Obtain and total the aggregate amounts of all
2 qualified production costs per qualified production
3 and per qualified production per taxable year;
- 4 (3) Provide a letter to the director of taxation
5 specifying the amount of the tax credit per qualified
6 production for each taxable year that a tax credit is
7 claimed and the cumulative amount of the tax credit
8 for all years claimed; and
- 9 (4) Submit a report to the legislature no later than
10 twenty days prior to the convening of each regular
11 session detailing the non-aggregated qualified
12 production costs that form the basis of the tax credit
13 claims and expenditures, itemized by taxpayer, in a
14 redacted format to preserve the confidentiality of the
15 taxpayers claiming the credit.

16 Upon each determination required under this subsection, the
17 department of business, economic development, and tourism shall
18 issue a letter to the taxpayer, regarding the qualified
19 production, specifying the qualified production costs and the
20 tax credit amount qualified for in each taxable year a tax
21 credit is claimed. The taxpayer for each qualified production



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

7 (j) Total tax credits claimed per qualified production
8 shall not exceed \$15,000,000.

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

11 (l) The total amount of tax credits allowed under this
12 section in any particular year shall be \$35,000,000; however, if
13 the total amount of credits applied for in any particular year
14 exceeds the aggregate amount of credits allowed for such year
15 under this section, the excess shall be treated as having been
16 applied for in the subsequent year and shall be claimed in such
17 year; provided that no excess shall be allowed to be claimed
18 after December 31, 2025.

19 [~~l~~] (m) For the purposes of this section:

20 "Commercial":



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

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

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

9 "Digital media" means production methods and platforms
10 directly related to the creation of cinematic imagery and
11 content, specifically using digital means, including but not
12 limited to digital cameras, digital sound equipment, and
13 computers, to be delivered via film, videotape, interactive game
14 platform, or other digital distribution media.

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



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

9 "Qualified production":

10 (1) Means a production, with expenditures in the State,
11 for the total or partial production of a feature-
12 length motion picture, short film, made-for-television
13 movie, commercial, music video, interactive game,
14 television series pilot, single season (up to
15 twenty-two episodes) of a television series regularly
16 filmed in the State (if the number of episodes per
17 single season exceeds twenty-two, additional episodes
18 for the same season shall constitute a separate
19 qualified production), television special, single
20 television episode that is not part of a television
21 series regularly filmed or based in the State,



1 national magazine show, or national talk show. For
2 the purposes of subsections (d) and (j), each of the
3 aforementioned qualified production categories shall
4 constitute separate, individual qualified productions;
5 and

6 (2) Does not include:

7 (A) News;

8 (B) Public affairs programs;

9 (C) Non-national magazine or talk shows;

10 (D) Televised sporting events or activities;

11 (E) Productions that solicit funds;

12 (F) Productions produced primarily for industrial,
13 corporate, institutional, or other private
14 purposes; and

15 (G) Productions that include any material or
16 performance prohibited by chapter 712.

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



- 1 235-110.9. Qualified production costs include but are not
2 limited to:
- 3 (1) Costs incurred during preproduction such as location
4 scouting and related services;
 - 5 (2) Costs of set construction and operations, purchases or
6 rentals of wardrobe, props, accessories, food, office
7 supplies, transportation, equipment, and related
8 services;
 - 9 (3) Wages or salaries of cast, crew, and musicians;
 - 10 (4) Costs of photography, sound synchronization, lighting,
11 and related services;
 - 12 (5) Costs of editing, visual effects, music, other post-
13 production, and related services;
 - 14 (6) Rentals and fees for use of local facilities and
15 locations, including rentals and fees for use of state
16 and county facilities and locations that are not
17 subject to general excise tax under chapter 237 or
18 income tax under this chapter;
 - 19 (7) Rentals of vehicles and lodging for cast and crew;
 - 20 (8) Airfare for flights to or from Hawaii, and interisland
21 flights;



- 1 (9) Insurance and bonding;
- 2 (10) Shipping of equipment and supplies to or from Hawaii,
- 3 and interisland shipments; and
- 4 (11) Other direct production costs specified by the
- 5 department in consultation with the department of
- 6 business, economic development, and tourism;
- 7 provided that any government-imposed fines, penalties, or
- 8 interest that are incurred by a qualified production within the
- 9 State shall not be "qualified production costs".

10 SECTION 3. Act 88, Session Laws of Hawaii 2006, as amended
 11 by Act 89, Session Laws of Hawaii 2013, is amended by amending
 12 section 4 to read as follows:

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

- 15 (1) Section 2 of this Act shall apply to qualified
- 16 production costs incurred on or after July 1, 2006,
- 17 and before January 1, [~~2019~~] 2026; and
- 18 (2) This Act shall be repealed on January 1, [~~2019~~] 2026,
- 19 and section 235-17, Hawaii Revised Statutes, shall be
- 20 reenacted in the form in which it read on the day
- 21 before the effective date of this Act."



1 SECTION 4. No rule shall be adopted pursuant to
2 chapter 91, Hawaii Revised Statutes, to expand the scope of
3 section 235-17, Hawaii Revised Statutes, if the rule conflicts
4 with the legislative intent of that section.

5 SECTION 5. The department of business, economic
6 development, and tourism shall submit an annual report on the
7 activities and expenditures of the motion picture, digital
8 media, and film production income tax credit to the legislature
9 no later than twenty days prior to each regular session until
10 the tax credit expires.

11 SECTION 6. No later than January 1, 2018, and each
12 January 1 thereafter, each film production that has production
13 expenditures of \$1,000,000 or more and is claiming a tax credit
14 pursuant to section 235-17, Hawaii Revised Statutes, shall
15 obtain an independent third party certification of qualified
16 production costs eligible for the motion picture, digital media,
17 and film production income tax credit in the form of a tax
18 opinion, as required under section 235-17(h), Hawaii Revised
19 Statutes, submitted to the department of business, economic
20 development, and tourism.



1 SECTION 7. Beginning January 1, 2018, the department of
2 business, economic development, and tourism, in collaboration
3 with the department of taxation, shall submit to the governor
4 and the legislature an annual report on the number of jobs
5 created in the State by, and the fiscal impact to the State of,
6 those film productions receiving the motion picture, digital
7 media, and film production income tax credit in the State.

8 SECTION 8. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 9. This Act shall take effect on December 31,
11 2018; provided that section 2 shall apply to taxable years
12 beginning after December 31, 2018.



Report Title:

Film; Digital Media Industry; Tax Credit

Description:

Amends the qualifications a production must meet in order to claim the credit. Caps the annual amount of tax credits that may be claimed at \$35,000,000. Extends the sunset date to January 1, 2026. Requires DBEDT to submit an annual report to the Legislature regarding the activities and expenditures of the tax credit. Clarifies that no rule shall be adopted to expand the scope of the tax credit where the rule conflicts with legislative intent. Requires certain film productions claiming the tax credit to hire an independent third party certification of qualified production costs eligible for the credit. Requires DBEDT, in collaboration with DOTAX, to submit to the Governor and the Legislature a report on the number of jobs created in the State and the fiscal impact of every film production receiving the tax credit in the State. (HB423 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

