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## A BILL FOR AN ACT

RELATING TO FILM CREDIT CAP REMOVAL.

**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 vital to maintaining a diversified economy. The motion  
3 picture, digital media, and film production income tax credit  
4 has been effective in stimulating the economy, creating quality  
5 jobs, encouraging students to stay in state, and promoting  
6 Hawaii as a visitor destination. Presently, the State is losing  
7 important projects to other states that have a higher credit  
8 cap, or no cap at all, and other countries that offer more  
9 appealing incentives. There are many missed opportunities for  
10 Hawaii when productions locate elsewhere.

11           The legislature further finds that the benefits to the  
12 State are important enough to warrant a removal of the annual  
13 cap on the tax credit to make Hawaii a more competitive locale  
14 for the film industry and bring tourism into the state.

15           The purpose of this Act is to remove the annual cap on the  
16 motion picture, digital media, and film production income tax  
17 credit.



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

3 "**§235-17 Motion picture, digital media, and film production**  
4 **income tax credit.** *[Repeal and reenactment on January 1, 2026.*

5 *L 2017, c 143, §3.]* (a) Any law to the contrary  
6 notwithstanding, there shall be allowed to each taxpayer subject  
7 to the taxes imposed by this chapter, an income tax credit that  
8 shall be deductible from the taxpayer's net income tax  
9 liability, if any, imposed by this chapter for the taxable year  
10 in which the credit is properly claimed. The amount of the  
11 credit shall be:

12 (1) Twenty per cent of the qualified production costs  
13 incurred by a qualified production in any county of  
14 the State with a population of over seven hundred  
15 thousand; or

16 (2) Twenty-five per cent of the qualified production costs  
17 incurred by a qualified production in any county of  
18 the State with a population of seven hundred thousand  
19 or less.

20 A qualified production occurring in more than one county may  
21 prorate its expenditures based upon the amounts spent in each



1 county, if the population bases differ enough to change the  
2 percentage of tax credit.

3 In the case of a partnership, S corporation, estate, or  
4 trust, the tax credit allowable is for qualified production  
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. For  
18 the purposes of this section, "net income tax liability" means  
19 net income tax liability reduced by all other credits allowed  
20 under this chapter.



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

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

- 12           (1) Meet the definition of a qualified production  
13               specified in subsection ~~(m)~~(1);
- 14           (2) Have qualified production costs totaling at least  
15               \$200,000;
- 16           (3) Provide the State a qualified Hawaii promotion, which  
17               shall be at a minimum, a shared-card, end-title screen  
18               credit, where applicable;
- 19           (4) Provide evidence of reasonable efforts to hire local  
20               talent and crew;



1           (5) Provide evidence when making any claim for products or  
2           services acquired or rendered outside of this State  
3           that reasonable efforts were unsuccessful to secure  
4           and use comparable products or services within this  
5           State;

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

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

16          (f) To receive the tax credit, the taxpayer shall first  
17          prequalify the production for the credit by registering with the  
18          department of business, economic development, and tourism during  
19          the development or preproduction stage.

20          (g) The director of taxation shall prepare forms as may be  
21          necessary to claim a credit under this section. The director



1 may also require the taxpayer to furnish information to  
2 ascertain the validity of the claim for credit made under this  
3 section and may adopt rules necessary to effectuate the purposes  
4 of this section pursuant to chapter 91.

5 (h) Every taxpayer claiming a tax credit under this  
6 section for a qualified production shall, no later than ninety  
7 days following the end of each taxable year in which qualified  
8 production costs were expended, submit a written, sworn  
9 statement to the department of business, economic development,  
10 and tourism, together with a verification review by a qualified  
11 certified public accountant using procedures prescribed by the  
12 department of business, economic development, and tourism,  
13 identifying:

- 14 (1) All qualified production costs as provided by  
15 subsection (a), if any, incurred in the previous  
16 taxable year;
- 17 (2) The amount of tax credits claimed pursuant to this  
18 section, if any, in the previous taxable year; and
- 19 (3) The number of total hires versus the number of local  
20 hires by category and by county.



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

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

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

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

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

17 (4) Submit a report to the legislature no later than  
18 twenty days prior to the convening of each regular  
19 session detailing the non-aggregated qualified  
20 production costs that form the basis of the tax credit  
21 claims and expenditures, itemized by taxpayer, in a



1 redacted format to preserve the confidentiality of the  
2 taxpayers claiming the credit.

3 Upon each determination required under this subsection, the  
4 department of business, economic development, and tourism shall  
5 issue a letter to the taxpayer, regarding the qualified  
6 production, specifying the qualified production costs and the  
7 tax credit amount qualified for in each taxable year a tax  
8 credit is claimed. The taxpayer for each qualified production  
9 shall file the letter with the taxpayer's tax return for the  
10 qualified production to the department of taxation.

11 Notwithstanding the authority of the department of business,  
12 economic development, and tourism under this section, the  
13 director of taxation may audit and adjust the tax credit amount  
14 to conform to the information filed by the taxpayer.

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

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

19 ~~(l)~~ (k) There shall be no limit on [F]the total amount of  
20 tax credits allowed under this section in any particular year  
21 ~~shall be \$50,000,000; however, if the total amount of credits~~





1 applied for in any particular year exceeds the aggregate amount  
2 of ~~credits allowed for such year under this section~~ \$50,000,000  
3 or greater, five per cent of the total aggregate amount of tax  
4 credits shall be deducted and transferred to the Hawaii  
5 television and film development special fund for the studio and  
6 infrastructure development program pursuant to chapter 201-113.  
7 ~~the excess shall be treated as having been applied for in the~~  
8 ~~subsequent year and shall be claimed in such year; provided that~~  
9 ~~no excess shall be allowed to be claimed after December 31,~~  
10 ~~2025.~~

11 ~~(m)~~ (1) For the purposes of this section:

12 "Commercial":

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

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

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



1 "Digital media" means production methods and platforms  
2 directly related to the creation of cinematic imagery and  
3 content, specifically using digital means, including but not  
4 limited to digital cameras, digital sound equipment, and  
5 computers, to be delivered via film, videotape, interactive game  
6 platform, or other digital distribution media.

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

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

21 "Qualified production":



- 1           (1) Means a production, with expenditures in the State,  
2           for the total or partial production of a feature-  
3           length motion picture, short film, made-for-television  
4           movie, commercial, music video, interactive game,  
5           television series pilot, single season (up to  
6           twenty-two episodes) of a television series regularly  
7           filmed in the State (if the number of episodes per  
8           single season exceeds twenty-two, additional episodes  
9           for the same season shall constitute a separate  
10          qualified production), television special, single  
11          television episode that is not part of a television  
12          series regularly filmed or based in the State,  
13          national magazine show, or national talk show. For  
14          the purposes of subsections (d) and (j), each of the  
15          aforementioned qualified production categories shall  
16          constitute separate, individual qualified productions;  
17          and
- 18          (2) Does not include:
- 19               (A) News;
- 20               (B) Public affairs programs;
- 21               (C) Non-national magazine or talk shows;



- 1 (D) Televised sporting events or activities;
- 2 (E) Productions that solicit funds;
- 3 (F) Productions produced primarily for industrial,  
4 corporate, institutional, or other private  
5 purposes; and
- 6 (G) Productions that include any material or  
7 performance prohibited by chapter 712.

8 "Qualified production costs" means the costs incurred by a  
9 qualified production within the State that are subject to the  
10 general excise tax under chapter 237 or income tax under this  
11 chapter and that have not been financed by any investments for  
12 which a credit was or will be claimed pursuant to section  
13 235-110.9. Qualified production costs include but are not  
14 limited to:

- 15 (1) Costs incurred during preproduction such as location  
16 scouting and related services;
- 17 (2) Costs of set construction and operations, purchases or  
18 rentals of wardrobe, props, accessories, food, office  
19 supplies, transportation, equipment, and related  
20 services;
- 21 (3) Wages or salaries of cast, crew, and musicians;



- 1 (4) Costs of photography, sound synchronization, lighting,  
2 and related services;
- 3 (5) Costs of editing, visual effects, music, other post-  
4 production, and related services;
- 5 (6) Rentals and fees for use of local facilities and  
6 locations, including rentals and fees for use of state  
7 and county facilities and locations that are not  
8 subject to general excise tax under chapter 237 or  
9 income tax under this chapter;
- 10 (7) Rentals of vehicles and lodging for cast and crew;
- 11 (8) Airfare for flights to or from Hawaii, and interisland  
12 flights;
- 13 (9) Insurance and bonding;
- 14 (10) Shipping of equipment and supplies to or from Hawaii,  
15 and interisland shipments; and
- 16 (11) Other direct production costs specified by the  
17 department in consultation with the department of  
18 business, economic development, and tourism;
- 19 provided that any government-imposed fines, penalties, or  
20 interest that are incurred by a qualified production within the  
21 State shall not be "qualified production costs".



1 SECTION 3. Section 201-113, Hawaii Revised Statutes, is amended  
2 to by amending subsection (b) to read as follows:

3 **"§201-113 Hawaii film and creative industries development**

4 **special fund.** (a) There is established in the state treasury  
5 the Hawaii film and creative industries development special fund  
6 into which shall be deposited:

- 7 (1) Appropriations by the legislature;
- 8 (2) Donations and contributions made by private  
9 individuals or organizations for deposit into the  
10 fund;
- 11 (3) Grants provided by governmental agencies or any other  
12 source; and
- 13 (4) Effective January 2, 2021, all revenues, fees, and  
14 charges from the processing of the motion picture,  
15 digital media, and film production income tax credit  
16 pursuant to section 235-17.

17 (b) The fund shall be used by the department to provide  
18 for:

- 19 (1) A program to provide seed capital for film, media, and  
20 creative industries intellectual property development  
21 projects for export, as determined by the department;



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1 (2) Programs that expand the skills of the State's resident  
2 workforce in the film, media, and creative industries;  
3 and

4 (3) Marketing programs that attract business opportunities  
5 within the film, media, and creative industries in the  
6 State.

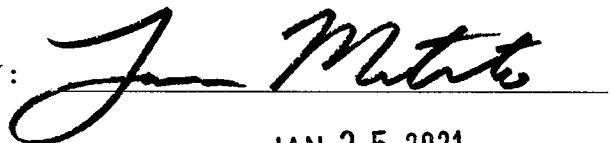
7 (4) Programs for studio and infrastructure development  
8 pursuant to chapter 235-17(k)."

9 SECTION 4. Statutory material to be repealed is bracketed and  
10 stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon approval.

12

INTRODUCED BY:



JAN 25 2021



# H.B. NO. 845

**Report Title:**

Motion Picture, Digital Media, and Film Production Income Tax Credit

**Description:**

Removes the cap on the amount that may be claimed per qualified production. Removes the limit for the total amount of tax credits allowed per year for the motion picture, digital media, and film production income tax credit. Deducts a percentage to be utilized for studio and infrastructure development in the State.

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