
A BILL FOR AN ACT

RELATING TO THE MOTION PICTURE, DIGITAL MEDIA, AND FILM
PRODUCTION INCOME TAX CREDIT.

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



1 tax credit are needed to ensure it continues to benefit the
2 State.

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

- 4 (1) Extend the motion picture, digital media, and film
5 production income tax credit for an additional five
6 years to provide stability and economic incentive
7 predictability for the film industry, so Hawaii
8 remains competitive and comparable to other
9 jurisdictions in attracting qualified productions,
10 which generates additional revenue, jobs, and tourism
11 marketing exposure;
- 12 (2) Clarify that qualifying production costs are those
13 costs incurred and expended within the State;
- 14 (3) Require that to qualify for the tax credit, a
15 production must provide evidence of recognition,
16 ability to understand, and efforts to respect and
17 comply with cultural and environmental sensitivities
18 and guidelines for filming in sensitive locations;
- 19 (4) Require that to qualify for the tax credit, a
20 production must employ or contract for the services of



1 cultural resources or historical, cultural, or
2 language experts to advise the production; and
3 (5) Require that to qualify for the tax credit, a
4 production must agree that if the production claims a
5 credit of more than \$8,000,000, the production will
6 provide an advanced screening of the finished product
7 in the county of the island in which the majority of
8 the production took place.

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

11 **"§235-17 Motion picture, digital media, and film**
12 **production income tax credit.** (a) Any law to the contrary
13 notwithstanding, there shall be allowed to each taxpayer subject
14 to the taxes imposed by this chapter, an income tax credit that
15 shall be deductible from the taxpayer's net income tax
16 liability, if any, imposed by this chapter for the taxable year
17 in which the credit is properly claimed. The amount of the
18 credit shall be:

19 (1) Twenty per cent of the qualified production costs
20 incurred and expended within the State by a qualified



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

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

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

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



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

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

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

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

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



- 1 (2) Have qualified production costs totaling at least
2 \$200,000;
- 3 (3) Provide the State, at a minimum, a shared-card, end-
4 title screen credit, where applicable;
- 5 (4) Provide evidence of reasonable efforts to hire local
6 talent and crew; [~~and~~]
- 7 (5) Provide evidence of financial or in-kind contributions
8 or educational or workforce development efforts, in
9 partnership with related local industry labor
10 organizations, educational institutions, or both,
11 toward the furtherance of the local film and
12 television and digital media industries[-];
- 13 (6) Provide evidence of ability to understand and navigate
14 cultural and environmental sensitivities unique to
15 Hawaii;
- 16 (7) Provide evidence of recognition of cultural and
17 environmental sensitivities, including those
18 regarding:
- 19 (A) Public lands adjacent to communities who have
20 concerns about using the area for filming;



- 1 (B) Nature preserves, wildlife sanctuaries, or areas
2 that are homes to endangered marine life;
- 3 (C) Ancient burial sites;
- 4 (D) Forested areas containing ancient taro terraces,
5 religious temples, or other architectural sites;
- 6 (E) Natural area reserves, marine reserves, Iolani
7 Palace, Washington Place, Mauna Ala, the King
8 Kamehameha statue in Honolulu, and Aliiolani
9 Hale; and
- 10 (F) Endangered marine mammals and other species;
- 11 (8) Provide evidence of reasonable efforts to comply with
12 the guidelines for filming in sensitive locations
13 established by the Hawaii film office;
- 14 (9) Employ or contract for the services of cultural
15 resources or historical, cultural, or language experts
16 to advise the production; and
- 17 (10) Agree that if any production claims a credit of more
18 than \$8,000,000 under this section, the production
19 shall provide a community screening of the finished
20 production in advance of its world premiere and within
21 the county of the island in which the majority of the



1 production took place; provided that at the time that
2 the final Hawaii production report is submitted, the
3 plans for this community screening shall be verified
4 with the Hawaii film office within the department of
5 business, economic development, and tourism, and the
6 plans are coordinated with the state and county film
7 office in advance of the screening.

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

12 (f) To receive the tax credit, the taxpayer shall first
13 prequalify the production for the credit by registering with the
14 Hawaii film office within the department of business, economic
15 development, and tourism during the development or preproduction
16 stage. Failure to comply with this provision may constitute a
17 waiver of the right to claim the credit. The taxpayer shall be
18 responsible for receiving a certification from the Hawaii film
19 office and shall include the certification in the taxpayer's tax
20 return to claim the tax credit.



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

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

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

20 Failure to comply with this provision may constitute a waiver of
21 the right to claim the credit. This information may be reported



1 from the department of business, economic development, and
2 tourism to the legislature in redacted form pursuant to
3 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) Qualified productions shall comply with subsections
18 (d), (e), (f), and (h).

19 (l) The total amount of tax credits allowed under this
20 section shall not exceed \$30,000,000 for all qualified taxpayers
21 in any calendar year; provided that any taxpayer who is not



1 eligible to claim all or part of the credit in a calendar year
2 due to the \$30,000,000 cap having been reached for that calendar
3 year shall be eligible to claim any unused credit in the
4 subsequent calendar year through the calendar year 2024. No
5 unused credit shall be claimed after December 31, 2024.

6 [~~1~~] (m) For the purposes of this section:

7 "Commercial":

- 8 (1) Means an advertising message that is filmed using
9 film, videotape, or digital media, for dissemination
10 via television broadcast or theatrical distribution;
- 11 (2) Includes a series of advertising messages if all parts
12 are produced at the same time over the course of six
13 consecutive weeks; and
- 14 (3) Does not include an advertising message with
15 Internet-only distribution.

16 "Digital media" means production methods and platforms
17 directly related to the creation of cinematic imagery and
18 content, specifically using digital means, including but not
19 limited to digital cameras, digital sound equipment, and
20 computers, to be delivered via film, videotape, interactive game
21 platform, or other digital distribution media.



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

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

15 "Qualified production":

16 (1) Means a production, with expenditures in the State,
17 for the total or partial production of a feature-
18 length motion picture, short film, made-for-television
19 movie, commercial, music video, interactive game,
20 television series pilot, single season (up to
21 twenty-two episodes) of a television series regularly



1 filmed in the State (if the number of episodes per
2 single season exceeds twenty-two, additional episodes
3 for the same season shall constitute a separate
4 qualified production), television special, single
5 television episode that is not part of a television
6 series regularly filmed or based in the State,
7 national magazine show, or national talk show. For
8 the purposes of subsections (d) and (j), each of the
9 aforementioned qualified production categories shall
10 constitute separate, individual qualified productions;
11 and

- 12 (2) Does not include:
- 13 (A) News;
 - 14 (B) Public affairs programs;
 - 15 (C) Non-national magazine or talk shows;
 - 16 (D) Televised sporting events or activities;
 - 17 (E) Productions that solicit funds;
 - 18 (F) Productions produced primarily for industrial,
19 corporate, institutional, or other private
20 purposes; and



1 (G) Productions that include any material or
2 performance prohibited by chapter 712.

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

- 10 (1) Costs incurred during preproduction such as location
11 scouting and related services;
- 12 (2) Costs of set construction and operations, purchases or
13 rentals of wardrobe, props, accessories, food, office
14 supplies, transportation, equipment, and related
15 services;
- 16 (3) Wages or salaries of cast, crew, and musicians;
- 17 (4) Costs of photography, sound synchronization, lighting,
18 and related services;
- 19 (5) Costs of editing, visual effects, music, other post-
20 production, and related services;



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

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



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

3 (1) Section 2 of this Act shall apply to qualified
4 production costs incurred on or after July 1, 2006,
5 and before January 1, [~~2019~~] 2024; and

6 (2) This Act shall be repealed on January 1, [~~2019~~] 2024,
7 and section 235-17, Hawaii Revised Statutes, shall be
8 reenacted in the form in which it read on the day
9 before the effective date of this Act[~~-~~]; provided
10 that a taxpayer may claim any unused credit in
11 accordance with section 235-17(1), Hawaii Revised
12 Statutes, through calendar year 2024."

13 SECTION 4. No rule shall be adopted pursuant to chapter
14 91, Hawaii Revised Statutes, to expand the scope of section 235-
15 17, Hawaii Revised Statutes, if the rule conflicts with the
16 legislative intent of that section.

17 SECTION 5. The department of business, economic
18 development, and tourism shall submit an annual report on the
19 activities and expenditures of the motion picture, digital
20 media, and film production income tax credit to the legislature



1 no later than twenty days prior to each regular session until
2 the tax credit expires.

3 SECTION 6. Beginning January 1, 2018, and each January 1
4 thereafter, the department of business, economic development,
5 and tourism shall hire an independent third party to conduct a
6 financial audit of each film production claiming a tax credit
7 pursuant to section 235-17, Hawaii Revised Statutes, for the
8 preceding year.

9 SECTION 7. Beginning January 1, 2018, the department of
10 business, economic development, and tourism, in collaboration
11 with the department of taxation, shall submit to the governor
12 and the legislature an annual report on the number of jobs
13 created in the State by, and the fiscal impact to the State of,
14 those film productions receiving the motion picture, digital
15 media, and film production income tax credit in the State;
16 provided that each report shall be independently verified and
17 audited for accuracy.

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



1 SECTION 9. This Act shall take effect on July 1, 2050;
2 provided that section 2 shall apply to taxable years beginning
3 after December 31, 2050.



Report Title:

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

Description:

Requires that to qualify for the tax credit a production must provide evidence of recognition, ability to understand, and efforts to respect and comply with cultural and environmental sensitivities in sensitive locations; including employing or contracting for the services of cultural resources or historical, cultural, or language experts to advise the production. Requires that to qualify for the tax credit a production must agree that if the production claims a credit of more than \$8,000,000, the production will provide an advanced screening of the finished product in the county of the island in which the majority of the production took place. Clarifies that qualified expenditures are required to be expended within this State. Places an aggregated annual cap on credits of \$30 million per calendar year. Allows a taxpayer to claim all or some of the credit unused due to the cap in the subsequent calendar year. Amends Act 88, Session Laws of Hawaii 2006, to extend the sunset date from 1/1/2019, to 1/1/24. 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 DBEDT to conduct a financial audit of every film production in the State. Requires DBEDT, in collaboration with Department of Taxation, 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; provided that each report shall be independently verified and audited for accuracy. Effective 7/1/2050. (SD2)

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