
A BILL FOR AN ACT

RELATING TO TAXES.

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

1 SECTION 1. Chapter 237, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:
4 "§237- Withholding of tax by persons claiming the
5 motion picture, digital media, and film production income tax
6 credit. (a) Every person making payment to a loan-out company
7 and claiming a tax credit pursuant to section 235-17 shall
8 deduct and withhold an amount equal to the highest rate of tax
9 under this chapter plus any applicable county surcharge for all
10 payments made to the loan-out company for services performed in
11 the State. The amounts withheld shall be remitted pursuant to
12 subsection (b). The amounts withheld under this section shall
13 be deemed to be a general excise tax withholding for the benefit
14 of the loan-out company performing the service.
15 (b) Every person subject to subsection (a) shall make a
16 return of the amount withheld and file the return with the
17 department of taxation no later than the twentieth day of the



1 calendar month immediately following the month in which the
2 payment was made to the loan-out company. The taxes withheld
3 shall be remitted with the return. The department of taxation
4 shall prescribe the forms and procedures to administer this
5 section.

6 (c) All taxes withheld pursuant to this section shall be
7 held in trust by the person withholding for the State. If any
8 person required to withhold and remit taxes under this section
9 fails to withhold or remit the taxes, the person shall be liable
10 for the failure as provided in section 235-64."

11 SECTION 2. Section 237-1, Hawaii Revised Statutes, is
12 amended by adding a new definition to be appropriately inserted
13 and to read as follows:

14 ""Loan-out company" means a wholly-owned entity formed on
15 behalf of a person that serves as a separate entity that
16 constitutes the person's means of entering a contract with a
17 third party for the purpose of providing services to the third
18 party."

19 SECTION 3. Section 235-17, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**§235-17 Motion picture, digital media, and film**
2 **production income tax credit.** (a) Any law to the contrary
3 notwithstanding, there shall be allowed to each taxpayer subject
4 to the taxes imposed by this chapter, an income tax credit that
5 shall be deductible from the taxpayer's net income tax
6 liability, if any, imposed by this chapter for the taxable year
7 in which the credit is properly claimed. The amount of the
8 credit shall be:

9 (1) [~~Twenty~~] Twenty-two per cent of the qualified
10 production costs incurred by a qualified production in
11 any county of the State with a population of over
12 seven hundred thousand; or

13 (2) [~~Twenty-five~~] Twenty-seven per cent of the qualified
14 production costs incurred by a qualified production in
15 any county of the State with a population of seven
16 hundred thousand or less.

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



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

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

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

14 (b) The credit allowed under this section shall be claimed
15 against the net income tax liability for the taxable year. For
16 the purposes of this section, "net income tax liability" means
17 net income tax liability reduced by all other credits allowed
18 under this chapter.

19 (c) If the tax credit under this section exceeds the
20 taxpayer's income tax liability, the excess of credits over
21 liability shall be refunded to the taxpayer; provided that no



1 refunds or payment on account of the tax credits allowed by this
2 section shall be made for amounts less than \$1. All claims,
3 including any amended claims, for tax credits under this section
4 shall be filed on or before the end of the twelfth month
5 following the close of the taxable year for which the credit may
6 be claimed. Failure to comply with any of the foregoing
7 provision shall constitute a waiver of the right to claim the
8 credit.

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

- 10 (1) Meet the definition of a qualified production
11 specified in subsection [~~(m)~~] (o);
- 12 (2) Have qualified production costs totaling at least
13 [~~\$200,000~~] \$100,000;
- 14 (3) Provide the State a qualified Hawaii promotion, which
15 shall be at a minimum, a shared-card, end-title screen
16 credit, where applicable;
- 17 (4) Provide evidence of reasonable efforts to hire local
18 talent and crew;
- 19 (5) Provide evidence when making any claim for products or
20 services acquired or rendered outside of this State
21 that reasonable efforts were unsuccessful to secure



1 and use comparable products or services within this
2 State;

3 (6) Provide evidence of financial or in-kind contributions
4 or educational or workforce development efforts, in
5 partnership with related local industry labor
6 organizations, educational institutions, or both,
7 toward the furtherance of the local film and
8 television and digital media industries[-];

9 (7) Be compliant with all applicable requirements under
10 title 14, including tax return filing and payments;
11 and

12 (8) Provide complete responses to the department of
13 taxation's inquiries and document requests, in the
14 form prescribed by the department, no later than
15 ninety days from the inquiry or request.

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

20 (f) To receive the tax credit, the taxpayer shall first
21 prequalify the production for the credit by registering with the



1 department of business, economic development, and tourism during
2 the development or preproduction stage.

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

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

18 (1) All qualified production costs as provided by
19 subsection (a), if any, incurred in the previous
20 taxable year;



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

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

5 This information may be reported from the department of
6 business, economic development, and tourism to the legislature
7 [~~in redacted form~~] pursuant to subsection (i) (4).

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

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

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

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



1 (4) Submit a report to the legislature no later than
2 twenty days prior to the convening of each regular
3 session detailing the non-aggregated qualified
4 production costs that form the basis of the tax credit
5 claims and expenditures, itemized by taxpayer, in a
6 redacted format to preserve the confidentiality and
7 that shall include the dollar amount claimed, name of
8 company, and name of the qualified production of the
9 taxpayers claiming the credit.

10 (j) Upon each determination required under [~~this~~]
11 subsection[~~7~~] (i), the department of business, economic
12 development, and tourism shall issue a letter to the taxpayer,
13 regarding the qualified production, specifying the qualified
14 production costs and the tax credit amount qualified for in each
15 taxable year a tax credit is claimed[~~7~~]; provided that the
16 department of business, economic development, and tourism shall
17 issue the letter to the taxpayer no later than seven months
18 after receipt of the taxpayer's statement under subsection (h).
19 The taxpayer for each qualified production shall file the letter
20 with the taxpayer's tax return for the qualified production to
21 the department of taxation. Notwithstanding the authority of



1 the department of business, economic development, and tourism
2 under this section, the director of taxation may audit and
3 adjust the tax credit amount to conform to the information filed
4 by the taxpayer.

5 (k) Each taxpayer claiming a tax credit under this section
6 shall submit to the department of business, economic
7 development, and tourism a fee for the motion picture, digital
8 media, and film production income tax credit in an amount equal
9 to 0.2 per cent of the tax credit claimed by the qualified
10 production no later than the deadline stated in subsection (c).
11 The department of business, economic development, and tourism
12 may prescribe the form and method by which this fee is remitted,
13 including through electronic means. The fees collected under
14 this subsection shall be deposited into the Hawaii film and
15 creative industries development special fund under section 201-
16 113.

17 ~~(j)~~ (l) Total tax credits claimed per qualified
18 production shall not exceed ~~[\$15,000,000.]~~ \$17,000,000.

19 ~~(k)~~ (m) Qualified productions shall comply with
20 subsections (d), (e), (f), ~~[and]~~ (h) [-], and (k).



1 ~~(1)~~ (n) The total amount of tax credits allowed under
2 this section in any particular year shall be \$50,000,000;
3 however, if the total amount of credits applied for in any
4 particular year exceeds the aggregate amount of credits allowed
5 for ~~such~~ that year under this section, the excess shall be
6 treated as having been applied for in the subsequent year and
7 shall be claimed in ~~such~~ the subsequent year; provided that no
8 excess shall be allowed to be claimed after December 31, ~~[2025.]~~
9 2032.

10 ~~(m)~~ (o) For the purposes of this section:

11 "Commercial":

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

20 "Digital media" means production methods and platforms
21 directly related to the creation of cinematic imagery and



1 content, specifically using digital means, including but not
2 limited to digital cameras, digital sound equipment, and
3 computers, to be delivered via film, videotape, interactive game
4 platform, or other digital distribution media.

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

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

19 "Qualified production":

20 (1) Means a production, with expenditures in the State,
21 for the total or partial production of a feature-



1 length motion picture, short film, made-for-television
2 movie, commercial, music video, interactive game,
3 television series pilot, single season (up to
4 twenty-two episodes) of a television series regularly
5 filmed in the State (if the number of episodes per
6 single season exceeds twenty-two, additional episodes
7 for the same season shall constitute a separate
8 qualified production), television special, single
9 television episode that is not part of a television
10 series regularly filmed or based in the State,
11 national magazine show, or national talk show. For
12 the purposes of subsections (d) and [~~(j)~~] (l), each
13 of the aforementioned qualified production categories
14 shall constitute separate, individual qualified
15 productions; and

- 16 (2) Does not include:
- 17 (A) News;
 - 18 (B) Public affairs programs;
 - 19 (C) Non-national magazine or talk shows;
 - 20 (D) Televised sporting events or activities;
 - 21 (E) Productions that solicit funds;



1 (F) Productions produced primarily for industrial,
2 corporate, institutional, or other private
3 purposes; and

4 (G) Productions that include any material or
5 performance prohibited by chapter 712.

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

14 (1) Costs incurred during preproduction such as location
15 scouting and related services;

16 (2) Costs of set construction and operations, purchases or
17 rentals of wardrobe, props, accessories, food, office
18 supplies, transportation, equipment, and related
19 services;

20 (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". "Qualified



1 production costs" does not include any costs funded by any
2 grant, forgivable loan, or other amounts not included in gross
3 income for purposes of this chapter."

4 SECTION 4. Act 88, Session Laws of Hawaii 2006, as amended
5 by Act 89, Session Laws of Hawaii 2013, as amended by Act 143,
6 Session Laws of Hawaii 2017, is amended by amending section 4 to
7 read as follows:

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

10 (1) Section 2 of this Act shall apply to qualified
11 production costs incurred on or after July 1, 2006,
12 and before January 1, [~~2026~~] 2033; and

13 (2) This Act shall be repealed on January 1, [~~2026~~] 2033,
14 and section 235-17, Hawaii Revised Statutes, shall be
15 reenacted in the form in which it read on the day
16 before the effective date of this Act."

17 SECTION 5. The department of taxation may establish two
18 full-time equivalent (2.0 FTE) permanent tax auditor positions
19 to examine claims for the motion picture, digital media, and
20 film production income tax credit pursuant to section 235-17,
21 Hawaii Revised Statutes, and other tax expenditures.



1 SECTION 6. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$153,334 or so much
3 thereof as may be necessary for fiscal year 2022-2023 to carry
4 out the purposes of this Act, including the payment of salaries
5 of the tax auditor positions authorized pursuant to section 5 of
6 this Act.

7 The sum appropriated shall be expended by the department of
8 taxation for the purposes of this Act.

9 SECTION 7. The department of business, economic
10 development, and tourism shall establish one full-time
11 equivalent (1.0 FTE) permanent program specialist position to
12 review and certify applications for the motion picture, digital
13 media, and film production income tax credit pursuant to section
14 235-17, Hawaii Revised Statutes, and other tax credit
15 applications submitted to the department for approval.

16 SECTION 8. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$76,666 or so much
18 thereof as may be necessary for fiscal year 2022-2023 to carry
19 out the purposes of this Act, including the payment of the
20 salary of the program special position established pursuant to
21 section 7 of this Act.



1 The sum appropriated shall be expended by the department of
2 business, economic development, and tourism for the purposes of
3 this Act.

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

6 SECTION 10. This Act shall take effect on July 1, 2022;
7 provided that sections 1, 2, 3, and 4 of this Act shall take
8 effect on January 1, 2023.



Report Title:

Motion Picture, Digital Media, and Film Production Income Tax Credit; Loan-out Companies; Qualified Productions; Qualified Production Costs; Withholdings; Appropriation

Description:

Beginning 1/1/2023, requires every person making payment to a loan-out company and claiming the motion picture, digital media, and film production income tax credit to withhold and remit to DOTAX a portion of all payments to the loan-out company; increases the amount of the tax credit; amends the requirements to claim the tax credit, including reducing the amount of qualified production costs; removes the requirement for productions to submit a verification review by a qualified certified public accountant when applying for the tax credit; requires the report by DBEDT to include the dollar amount claimed, name of the company, and name of the qualified production of the taxpayer; changes the time frame for DBEDT to issue a letter to the taxpayer claiming the tax credit; increases the cap of the claimable amount of the tax credit; requires taxpayers to submit a fee to DBEDT; and clarifies the definition of "qualified production costs". Extends the period during which excess income tax credits may be claimed to 12/31/2032. Authorizes, and appropriates funds for, DOTAX to establish 2 full-time equivalent tax auditor positions. Requires, and appropriates funds for, DBEDT to establish 1 full-time equivalent program specialist position. (CD1)

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