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# 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 motion  
5 picture, digital media, and film production income tax credit.

6           (a) Every person making payment to a loan-out company and  
7 claiming a tax credit pursuant to section 235-17 shall deduct  
8 and withhold an amount equal to 4.5 per cent of all payments  
9 made to the loan-out company for services performed in the  
10 State. The amounts withheld shall be remitted pursuant to  
11 subsection (b). The amounts withheld under this section shall  
12 be deemed to be a tax withholding for the benefit of the loan-  
13 out company's employee performing the service.

14           (b) Every person subject to subsection (a) shall make a  
15 return of the amount withheld and file the return with the  
16 department of taxation no later than thirty calendar days from  
17 the date on which the payment was made to the loan-out company.



1 The taxes withheld shall be remitted with the return. The  
2 department of taxation shall prescribe the forms and procedures  
3 to administer this section, including any application processing  
4 fees, as necessary.

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

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

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

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

20 **"§235-17 Motion picture, digital media, and film**  
21 **production income tax credit. (a) Any law to the contrary**



1 notwithstanding, there shall be allowed to each taxpayer subject  
2 to the taxes imposed by this chapter, an income tax credit that  
3 shall be deductible from the taxpayer's net income tax  
4 liability, if any, imposed by this chapter for the taxable year  
5 in which the credit is properly claimed. The amount of the  
6 credit shall be:

- 7 (1) Twenty per cent of the qualified production costs  
8 incurred by a qualified production in any county of  
9 the State with a population of over seven hundred  
10 thousand; or  
11 (2) Twenty-five per cent of the qualified production costs  
12 incurred by a qualified production in any county of  
13 the State with a population of seven hundred thousand  
14 or less.

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

19 In the case of a partnership, S corporation, estate, or  
20 trust, the tax credit allowable is for qualified production  
21 costs incurred by the entity for the taxable year. The cost



1 upon which the tax credit is computed shall be determined at the  
2 entity level. Distribution and share of credit shall be  
3 determined by rule.

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

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

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

16 (c) If the tax credit under this section exceeds the  
17 taxpayer's income tax liability, the excess of credits over  
18 liability shall be refunded to the taxpayer; provided that no  
19 refunds or payment on account of the tax credits allowed by this  
20 section shall be made for amounts less than \$1. All claims,  
21 including any amended claims, for tax credits under this section



1 shall be filed on or before the end of the twelfth month  
2 following the close of the taxable year for which the credit may  
3 be claimed. Failure to comply with the foregoing provision  
4 shall constitute a waiver of the right to claim the credit.

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

6 (1) Meet the definition of a qualified production  
7 specified in subsection [~~(m)~~] (n);

8 (2) Have qualified production costs totaling at least  
9 \$200,000;

10 (3) Provide the State a qualified Hawaii promotion, which  
11 shall be at a minimum, a shared-card, end-title screen  
12 credit, where applicable;

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

15 (5) Provide evidence when making any claim for products or  
16 services acquired or rendered outside of this State  
17 that reasonable efforts were unsuccessful to secure  
18 and use comparable products or services within this  
19 State;

20 (6) Provide evidence of financial or in-kind contributions  
21 or educational or workforce development efforts, in



1 partnership with related local industry labor  
2 organizations, educational institutions, or both,  
3 toward the furtherance of the local film and  
4 television and digital media industries[-] and

5 (7) Submit to the department of taxation an application  
6 processing fee for the motion picture, digital media,  
7 and film production income tax credit in an amount  
8 equal to one-tenth of a per cent of the tax credit  
9 claimed by the qualified production no later than the  
10 deadline prescribed in subsection (c); provided that:

11 (A) The department of taxation may prescribe the form  
12 and method by which this fee is remitted,  
13 including through electronic means; and

14 (B) The fees collected under this paragraph shall be:

15 (i) Capped at \$20,000; and

16 (ii) Deposited into the tax administration  
17 special fund established under section 235-  
18 20.5.

19 (e) On or after July 1, 2006, no qualified production cost  
20 that has been financed by investments for which a credit was



1 claimed by any taxpayer pursuant to section 235-110.9 is  
2 eligible for credits under this section.

3 (f) To receive the tax credit, the taxpayer shall first  
4 prequalify the production for the credit by registering with the  
5 department of business, economic development, and tourism during  
6 the development or preproduction stage.

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

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



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

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

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

- 13 (1) Maintain records of the names of the taxpayers and
- 14 qualified productions thereof claiming the tax credits
- 15 under subsection (a);
- 16 (2) Obtain and total the aggregate amounts of all
- 17 qualified production costs per qualified production
- 18 and per qualified production per taxable year;
- 19 (3) Provide a letter to the director of taxation
- 20 specifying the amount of the tax credit per qualified
- 21 production for each taxable year that a tax credit is





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

12           Upon each determination required under this subsection, the  
13   department of business, economic development, and tourism shall  
14   issue a letter to the taxpayer, regarding the qualified  
15   production, specifying the qualified production costs and the  
16   tax credit amount qualified for in each taxable year a tax  
17   credit is claimed. The taxpayer for each qualified production  
18   shall file the letter with the taxpayer's tax return for the  
19   qualified production to the department of taxation.  
20   Notwithstanding the authority of the department of business,  
21   economic development, and tourism under this section, the



1 director of taxation may audit and adjust the tax credit amount  
2 to conform to the information filed by the taxpayer.

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

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

7 (l) The total amount of tax credits allowed under this  
8 section in any particular year shall be \$50,000,000; however, if  
9 the total amount of credits applied for in any particular year  
10 exceeds the aggregate amount of credits allowed for [~~sueh~~] that  
11 year under this section, the excess shall be treated as having  
12 been applied for in the subsequent year and shall be claimed in  
13 [~~sueh~~] the subsequent year; provided that no excess shall be  
14 allowed to be claimed after December 31, [~~2025-~~] 2032.

15 (m) Every person making payment to a loan-out company  
16 shall withhold an amount equal to 4.5 per cent of qualified  
17 production costs for services performed in the State; provided  
18 that the amount withheld shall be remitted to the department of  
19 taxation to the credit of the general excise tax account of the  
20 loan-out company to whom the qualified production costs were  
21 paid or will be paid. The amount withheld shall be remitted no



1 later than thirty calendar days after the qualified production  
2 costs are paid or incurred. Taxpayers who fail to comply with  
3 this subsection shall be subject to the applicable interest and  
4 penalties pursuant to chapter 231 and section 235-104.

5 [~~m~~] (n) For the purposes of this section:

6 "Commercial":

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

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

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

15 "Digital media" means production methods and platforms  
16 directly related to the creation of cinematic imagery and  
17 content, specifically using digital means, including but not  
18 limited to digital cameras, digital sound equipment, and  
19 computers, to be delivered via film, videotape, interactive game  
20 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 4. Section 235-20.5, Hawaii Revised Statutes, is  
19 amended to read as follows:



1           "§235-20.5 Tax administration special fund; established.

2       (a) There is established a tax administration special fund,  
3       into which shall be deposited:

4           (1) Fees collected under sections 235-20 and 235-110.9;

5           (2) Revenues collected by the special enforcement section  
6           pursuant to section 231-85; provided that in each  
7           fiscal year, of the total revenues collected by the  
8           special enforcement section, all revenues in excess of  
9           \$2,000,000 shall be deposited into the general fund;

10           ~~and~~

11           (3) Fines assessed pursuant to section 237D-4[-]; and

12           (4) Application processing fees collected under section  
13           231-36.8 and 237- .

14       (b) The moneys in the fund shall be used for the following  
15       purposes:

16           (1) Issuing comfort letters, letter rulings, written  
17           opinions, and other guidance to taxpayers;

18           (2) ~~[Issuing certificates under [section] 235-110.9;]~~  
19           Processing qualified production applications for the  
20           motion picture, digital media, and film production





1           income tax credit provided under sections 235-17 and  
2           237-\_\_\_ ;

3           (3) Administering the operations of the special  
4           enforcement section;

5           (4) Funding support staff positions in the special  
6           enforcement section; and

7           (5) Developing, implementing, and providing taxpayer  
8           education programs, including tax publications."

9           SECTION 5. The department of taxation may establish four  
10          full-time equivalent (4.0 FTE) tax auditor positions to examine  
11          claims for the motion picture, digital media, and film  
12          production income tax credit pursuant to section 235-17, Hawaii  
13          Revised Statutes, and other tax expenditures.

14          SECTION 6. Statutory material to be repealed is bracketed  
15          and stricken. New statutory material is underscored.

16          SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Motion Picture, Digital Media, and Film Production Tax Credit;  
Loan-out Companies; Qualified Productions; Withholdings; Tax  
Administration Special Fund; Positions

**Description:**

Requires every person making payment to a loan-out company and claiming the film tax credit to withhold payments to loan-out companies. Removes the requirement for productions to submit a verification review by a qualified certified public accountant using procedures prescribed by the Department of Business, Economic Development, And Tourism (DBEDT) when applying for the film 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. Extends the period during which excess income tax credits may be claimed to 12/31/2032. Requires qualified taxpayers to withhold a certain amount and remit that amount. Amends the use of the tax administration special fund. Authorizes the Department of Taxation to establish four full-time equivalent tax auditor positions. Effective 7/1/2050. (SD1)

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