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# A BILL FOR AN ACT

RELATING TO THE ECONOMY.

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

1           SECTION 1. The purpose of this Act is to amend the motion  
2 picture, digital media, and film production income tax credit.

3 Specifically, this Act:

4           (1) Extends the credit to January 1, 2031, from January 1,  
5               2016;

6           (2) Increases the credit ceiling per qualified production  
7               to \$10,000,000 from \$8,000,000; and

8           (3) Provides for the separate calculation of the credit  
9               amount on wages and salaries included in qualified  
10              production costs. The credit amount is calculated at  
11              fifteen per cent of the wages and salaries, no matter  
12              the location of the qualified production, plus an  
13              additional five per cent of the wages and salaries  
14              paid to state residents.

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

17           "§235-17 Motion picture, digital media, and film  
18 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 which  
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.

6 The amount of the credit shall be[+] the sum of all of the  
7 applicable of the following:

- 8 (1) Fifteen per cent of the qualified production costs,  
9 other than wages and salaries of cast, crew, and  
10 musicians, incurred by a qualified production in any  
11 county of the State with a population of over seven  
12 hundred thousand; [~~o~~]
- 13 (2) Twenty per cent of the qualified production costs,  
14 other than wages and salaries of cast, crew, and  
15 musicians, incurred by a qualified production in any  
16 county of the State with a population of seven hundred  
17 thousand or less[~~-~~];
- 18 (3) Fifteen per cent of the wages and salaries of all  
19 cast, crew, and musicians that are included in the  
20 qualified production costs incurred by a qualified  
21 production in the State; and



1        (4) Five per cent of the wages and salaries of cast, crew,  
2        and musicians:

3        (A) Who are residents of the State; and

4        (B) That are included in the qualified production  
5        costs incurred by a qualified production in the  
6        State.

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 [~~(l)~~] (m);



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

17           (f) To receive the tax credit, the taxpayer shall first  
18 prequalify the production for the credit by registering with the  
19 department of business, economic development, and tourism during  
20 the development or preproduction stage. To prequalify for the  
21 credit amount under subsection (a)(4), the taxpayer shall submit  
22 a written pledge of the intent to comply with the requirement to



1 receive that credit amount. Failure to comply with this  
2 provision may constitute a waiver of the right to claim the  
3 credit.

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

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

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

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

21 (3) The number of total hires versus the number of local  
22 hires by category (i.e., department) and by county.



1 (i) The department of business, economic development, and  
2 tourism shall:

3 (1) Maintain records of the names of the taxpayers and  
4 qualified productions thereof claiming the tax credits  
5 under subsection (a);

6 (2) Obtain and total the aggregate amounts of all  
7 qualified production costs per qualified production  
8 and per qualified production per taxable year; and

9 (3) Provide a letter to the director of taxation  
10 specifying the amount of the tax credit per qualified  
11 production for each taxable year that a tax credit is  
12 claimed and the cumulative amount of the tax credit  
13 for all years claimed.

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

22 Notwithstanding the authority of the department of business,



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

4 (j) The department of business, economic development, and  
5 tourism shall submit a report to the governor and legislature  
6 not less than twenty days prior to the convening of the regular  
7 sessions of 2015, 2020, 2025, and 2030 on the economic impact of  
8 the tax credit of this section. The reports shall include an  
9 estimate of the following for each year since 2012 or the last  
10 year covered by the preceding report, as applicable:

- 11 (1) Capital from out-of-state expended in the State on  
12 qualified production costs;
- 13 (2) Total expenditures for qualified production costs in  
14 the State;
- 15 (3) Total full-time equivalent jobs created by qualified  
16 productions in the State;
- 17 (4) Number of those full-time equivalent jobs filled by  
18 residents of the State;
- 19 (5) Total wages and salaries paid in the State for  
20 qualified productions;





1        (6) Amount of the total wages and salaries paid in the  
2                    State to residents of the State for qualified  
3                    productions; and

4        (7) Any other information that the department deems  
5                    necessary.

6        [~~(j)~~] (k) Total tax credits claimed per qualified  
7 production shall not exceed [~~\$8,000,000-~~] \$10,000,000.

8        [~~(k)~~] (l) Qualified productions shall comply with  
9 subsections (d), (e), (f), and (h).

10       [~~(l)~~] (m) 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~~] internet-only distribution.

20       "Digital media" means production methods and platforms  
21 directly related to the creation of cinematic imagery and  
22 content, specifically using digital means, including but not



1 limited to digital cameras, digital sound equipment, and  
2 computers, to be delivered via film, videotape, interactive game  
3 platform, or other digital distribution media (excluding  
4 [~~Internet-only~~] internet-only distribution).

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-  
22 length motion picture, short film, made-for-television



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

15 (2) Does not include: daily news; public affairs programs;  
16 non-national magazine or talk shows; televised  
17 sporting events or activities; productions that  
18 solicit funds; productions produced primarily for  
19 industrial, corporate, institutional, or other private  
20 purposes; and productions that include any material or  
21 performance prohibited by chapter 712.



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

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



- 1           (8) Airfare for flights to or from Hawaii, and interisland
- 2                   flights;
- 3           (9) Insurance and bonding;
- 4           (10) Shipping of equipment and supplies to or from Hawaii,
- 5                   and interisland shipments; and
- 6           (11) Other direct production costs specified by the
- 7                   department in consultation with the department of
- 8                   business, economic development, and tourism.

9           "Resident of the State" means the same as "resident"

10          defined in section 103B-1."

11           SECTION 3. Act 88, Session Laws of Hawaii 2006, is amended  
12 by amending 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, [~~2016,~~] 2031; and

18           (2) This Act shall be repealed on January 1, [~~2016,~~] 2031,  
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. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act, upon its approval, shall apply to  
4 taxable years beginning after December 31, 2011.

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INTRODUCED BY:

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JAN 25 2012



# H.B. NO. 2869

**Report Title:**

Film Tax Credit; Amendments

**Description:**

Extends the motion picture, digital media, and film production tax credit until 01/01/31 from 01/01/16. Raises the qualified production credit ceiling to \$10 million from \$8 million. Separates the calculation of the credit amount based on wages and salaries from the credit amount based on other qualified production costs. Provides that the credit amount includes 15% of the wages and salaries paid to all cast, crew, and musicians of the qualified production, plus an additional 5% credit amount on wages and salaries of cast, crew, and musicians who are state residents.

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