
A BILL FOR AN ACT

RELATING TO TAXATION.

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

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

- 11 (1) Fifteen per cent of the qualified production costs
12 incurred by a qualified production in any county of
13 the State with a population of over seven hundred
14 thousand; or
15 (2) Twenty per cent of the qualified production costs
16 incurred by a qualified production in any county of
17 the State with a population of seven hundred thousand
18 or less.



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

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

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

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

18 (b) The credit allowed under this section shall be claimed
19 against the net income tax liability for the taxable year. For
20 the purposes of this section, "net income tax liability" means
21 net income tax liability reduced by all other credits allowed
22 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 (1);
- 14 (2) Have qualified production costs totaling at least
15 \$200,000 [↗] for a qualified production, or \$50,000 for
16 a qualified digital media project or qualified
17 independent and emerging media project;
- 18 (3) Provide [~~the State, at a minimum, a shared card, end-~~
19 ~~title screen credit, where applicable;~~] marketing
20 materials promoting the State as a tourist
21 destination, or film and digital media production



1 destination if appropriate, at no cost to the State,
2 and that, at a minimum, shall include:

3 (A) For a film production, the placement of a five-
4 second long static or animated "Filmed in Hawaii"
5 or "Produced in Hawaii" logo in the end credits
6 before the below-the-line crew crawl for the life
7 of the project and the inclusion of a link to a
8 state website on the production's web page;

9 (B) For a television production, the placement of an
10 embedded five-second long Hawaii promotion during
11 each broadcast worldwide for the life of the
12 project and the inclusion of a link to a state
13 website on the production's web page;

14 (C) For a music video, the placement of a "Filmed in
15 Hawaii" or "Produced in Hawaii" logo at the end
16 of each video and within any online promotion; or

17 (D) For an interactive game, the placement of a
18 fifteen-second long Hawaii advertisement in each
19 unit sold and embedded within any online
20 promotion;

21 (4) Provide evidence of reasonable efforts to hire local
22 talent and crew; and



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

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

11 (f) To receive the tax credit, the taxpayer shall first
12 prequalify the production for the credit by registering with the
13 department of business, economic development, and tourism during
14 the development or preproduction stage. Failure to comply with
15 this provision may constitute a waiver of the right to claim the
16 credit.

17 (g) The director of taxation shall prepare forms as may be
18 necessary to claim a credit under this section. The director
19 may also require the taxpayer to furnish information to
20 ascertain the validity of the claim for credit made under this
21 section and may adopt rules necessary to effectuate the purposes
22 of this section pursuant to chapter 91.



1 (h) Every taxpayer claiming a tax credit under this
2 section for a qualified production shall, no later than ninety
3 days following the end of each taxable year in which qualified
4 production costs were expended, submit a written, sworn
5 statement to the department of business, economic development,
6 and tourism, identifying:

7 (1) All qualified production costs as provided by
8 subsection (a), if any, incurred in the previous
9 taxable year;

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

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

14 (i) The department of business, economic development, and
15 tourism shall:

16 (1) Maintain records of the names of the taxpayers and
17 qualified productions thereof claiming the tax credits
18 under subsection (a);

19 (2) Obtain and total the aggregate amounts of all
20 qualified production costs per qualified production
21 and per qualified production per taxable year; and



1 (3) Provide a letter to the director of taxation
2 specifying the amount of the tax credit per qualified
3 production for each taxable year that a tax credit is
4 claimed and the cumulative amount of the tax credit
5 for all years claimed.

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

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

18 (j) Total tax credits claimed per qualified production
19 shall not exceed \$8,000,000.

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

22 (l) For the purposes of this section:



1 "Commercial":

2 (1) Means an advertising message that is filmed using
3 film, videotape, or digital media, for dissemination
4 via television broadcast, the Internet, wireless
5 transmission, or theatrical distribution; and

6 (2) Includes a series of advertising messages if all parts
7 are produced at the same time over the course of six
8 consecutive weeks [~~and~~

9 ~~(3) Does not include an advertising message with~~
10 ~~Internet-only distribution].~~

11 "Digital media" means any and all production methods and
12 platforms, existing on or after the effective date of this Act,
13 that are directly related to the creation of cinematic imagery
14 and other content, specifically using digital means, including
15 but not limited to digital cameras, digital sound equipment, and
16 computers, to be delivered via film, videotape, interactive game
17 platform, internet, wireless, or other digital distribution
18 media [~~(excluding Internet-only distribution).~~] existing on or
19 after the effective date of this Act.

20 "Post production" means production activities and services
21 conducted after principal photography is completed, including
22 but not limited to editing, film and video transfers,



1 duplication, transcoding, dubbing, subtitling, credits, closed
2 captioning, audio production, special effects (visual and
3 sound), graphics, and animation.

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

12 "Qualified digital media project" means development of
13 animation, graphics, visual effects, related sound recordings,
14 post production, and interactive media for entertainment and
15 education in any and all formats, existing on or after the
16 effective date of this Act, that is produced for distribution in
17 commercial or educational markets, including but not limited to
18 applications for electronic devices, existing on or after the
19 effective date of this Act, video games and productions intended
20 for game platform, physical media, internet, or wireless
21 distribution.



1 "Qualified independent and emerging media project" means a
2 qualified production of film, video, television, or interactive
3 entertainment that is produced for distribution in commercial or
4 educational markets, including but not limited to feature film,
5 short film, television show, television series, a video game or
6 production intended for game platform, physical media, internet,
7 or wireless distribution.

8 "Qualified production":

9 (1) Means a production, with expenditures in the State,
10 for the total or partial production of a feature-
11 length motion picture, short film, made-for-television
12 movie, commercial, music video, interactive game,
13 television series pilot, single season (up to
14 twenty-two episodes) of a television series regularly
15 filmed in the State (if the number of episodes per
16 single season exceeds twenty-two, additional episodes
17 for the same season shall constitute a separate
18 qualified production), television special, single
19 television episode that is not part of a television
20 series regularly filmed or based in the State,
21 national magazine show, ~~[or]~~ national talk show~~[-]~~, or
22 sound recording projects used in films, television



1 series, television pilots, or made-for-television
2 movies. For the purposes of subsections (d) and (j),
3 each of the aforementioned qualified production
4 categories shall constitute separate, individual
5 qualified productions [7]. Notwithstanding the
6 foregoing, for purposes of satisfying the criteria of
7 subsection (d)(2), a taxpayer may claim as part of a
8 qualified production the creation of related content
9 intended for distribution over the Internet, wireless
10 network, or similar methods of distribution existing
11 on or after the effective date of this Act; and

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

19 "Qualified production costs" means the costs incurred by a
20 qualified production within the State that are subject to the
21 general excise tax under chapter 237 or income tax under this
22 chapter and that have not been financed by any investments for



1 which a credit was or will be claimed pursuant to section
2 235-110.9. Qualified production costs include but are not
3 limited to:

4 (1) Costs incurred during preproduction such as location
5 scouting and related services;

6 (2) Costs of set construction and operations, purchases or
7 rentals of wardrobe, props, accessories, food, office
8 supplies, transportation, equipment, and related
9 services;

10 (3) Wages or salaries of cast, technical and production
11 crew, and musicians;

12 (4) Costs of photography, sound synchronization, lighting,
13 and related services;

14 (5) Costs of editing, digital effects, visual effects,
15 music, sound synchronization, sound recordings,
16 musical composition, other post-production, and
17 related services;

18 (6) Rentals and fees for use of local facilities and
19 locations;

20 (7) Rentals of vehicles and lodging for cast and crew;

21 (8) Airfare for flights to or from Hawaii, and interisland
22 flights;



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

7 SECTION 2. Act 88, Session Laws of Hawaii 2006, is amended
8 by amending section 4 to read as follows:

9 "SECTION 4. This Act shall take effect on July 1, 2006;
10 provided that[+]

- 11 ~~(1) Section~~ section 2 of this Act shall apply to
- 12 qualified production costs incurred on or after
- 13 July 1, 2006 [~~and before January 1, 2016; and~~
- 14 ~~(2) This Act shall be repealed on January 1, 2016, and~~
- 15 ~~section 235-17, Hawaii Revised Statutes, shall be~~
- 16 ~~reenacted in the form in which it read on the day~~
- 17 ~~before the effective date of this Act]."~~

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2013;
21 provided that:



H.B. NO. 1135

1 (1) Section 2 shall apply to qualified production costs
2 incurred on or after July 1, 2013, and before January
3 1, 2028; and

4 (2) This Act shall be repealed on January 1, 2028;
5 provided further that section 235-17, Hawaii Revised Statutes,
6 shall be reenacted in the form in which it read on the day
7 before the effective date of Act 88, Session Laws of Hawaii
8 2006.

9

INTRODUCED BY:

Cindy Evans
[Signature]

JAN 23 2013



H.B. NO. 1135

Report Title:

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

Description:

Amends the motion picture, digital media, and film production income tax credit by: (1) clarifying promotional requirements to qualify for the tax credit; (2) expanding the methods by which qualifying productions may be distributed; (3) providing definitions for "qualified digital media project" and "qualified independent and emerging media project"; and (4) expanding the scope of production costs that may be claimed under the tax credit to include such costs as digital effects, sound synchronization, sound recording, and musical composition. Sunset 1/1/2028.

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