
A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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 while
6 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. Act 143 Session
10 Laws of Hawaii 2017, extended the motion picture, digital media,
11 and film production income tax credit's sunset date by seven
12 years so that it is now effective until January 1, 2026. That
13 law also placed an annual \$35,000,000 cap on the tax credit,
14 although it was a "rolling cap" so that any claims for a credit
15 that exceeded \$35,000,000 in one year could be applied toward
16 the following year's cap, except for the final, seventh year of
17 the tax credit in the year 2026.



1 The legislature finds that this cap has created some
2 uncertainty in the industry and may act as a disincentive for
3 new and longer-term productions that may be in the development
4 and preproduction phases.

5 The purpose of this Act is to remove the annual \$35,000,000
6 cap on the motion picture, digital media, and film production
7 income tax credit.

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

10 "**§235-17 Motion picture, digital media, and film**
11 **production income tax credit.** (a) Any law to the contrary
12 notwithstanding, there shall be allowed to each taxpayer subject
13 to the taxes imposed by this chapter, an income tax credit that
14 shall be deductible from the taxpayer's net income tax
15 liability, if any, imposed by this chapter for the taxable year
16 in which the credit is properly claimed. The amount of the
17 credit shall be:

18 (1) Twenty per cent of the qualified production costs
19 incurred by a qualified production in any county of
20 the State with a population of over seven hundred
21 thousand; or



1 (2) Twenty-five per cent of the qualified production costs
2 incurred by a qualified production in any county of
3 the State with a population of seven hundred thousand
4 or less.

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

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

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

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



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

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

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

- 17 (1) Meet the definition of a qualified production
18 specified in subsection ~~[(m)-7]~~ (1);
- 19 (2) Have qualified production costs totaling at least
20 \$200,000;



- 1 (3) Provide the State a qualified Hawaii promotion, which
2 shall be at a minimum, a shared-card, end-title screen
3 credit, where applicable;
- 4 (4) Provide evidence of reasonable efforts to hire local
5 talent and crew;
- 6 (5) Provide evidence when making any claim for products or
7 services acquired or rendered outside of this State
8 that reasonable efforts were unsuccessful to secure
9 and use comparable products or services within this
10 State;
- 11 (6) Provide evidence of financial or in-kind contributions
12 or educational or workforce development efforts, in
13 partnership with related local industry labor
14 organizations, educational institutions, or both,
15 toward the furtherance of the local film and
16 television and digital media industries.
- 17 (e) On or after July 1, 2006, no qualified production cost
18 that has been financed by investments for which a credit was
19 claimed by any taxpayer pursuant to section 235-110.9 is
20 eligible for credits under this section.



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

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

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



- 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 of the
9 taxpayers claiming the credit.

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



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

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

5 ~~[(1) The total amount of tax credits allowed under this~~
6 ~~section in any particular year shall be \$35,000,000; however, if~~
7 ~~the total amount of credits applied for in any particular year~~
8 ~~exceeds the aggregate amount of credits allowed for such year~~
9 ~~under this section, the excess shall be treated as having been~~
10 ~~applied for in the subsequent year and shall be claimed in such~~
11 ~~year; provided that no excess shall be allowed to be claimed~~
12 ~~after December 31, 2025.~~

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

14 "Commercial":

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

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



1 (3) Does not include an advertising message with
2 Internet-only distribution.

3 "Digital media" means production methods and platforms
4 directly related to the creation of cinematic imagery and
5 content, specifically using digital means, including but not
6 limited to digital cameras, digital sound equipment, and
7 computers, to be delivered via film, videotape, interactive game
8 platform, or other digital distribution media.

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

15 "Production" means a series of activities that are directly
16 related to the creation of visual and cinematic imagery to be
17 delivered via film, videotape, or digital media and to be sold,
18 distributed, or displayed as entertainment or the advertisement
19 of products for mass public consumption, including but not
20 limited to scripting, casting, set design and construction,



1 transportation, videography, photography, sound recording,
2 interactive game design, and post-production.

3 "Qualified production":

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

21 (2) Does not include:



- 1 (A) News;
- 2 (B) Public affairs programs;
- 3 (C) Non-national magazine or talk shows;
- 4 (D) Televised sporting events or activities;
- 5 (E) Productions that solicit funds;
- 6 (F) Productions produced primarily for industrial,
7 corporate, institutional, or other private
8 purposes; and
- 9 (G) Productions that include any material or
10 performance prohibited by chapter 712.

11 "Qualified production costs" means the costs incurred by a
12 qualified production within the State that are subject to the
13 general excise tax under chapter 237 or income tax under this
14 chapter and that have not been financed by any investments for
15 which a credit was or will be claimed pursuant to section
16 235-110.9. Qualified production costs include but are not
17 limited to:

- 18 (1) Costs incurred during preproduction such as location
19 scouting and related services;
- 20 (2) Costs of set construction and operations, purchases or
21 rentals of wardrobe, props, accessories, food, office



- 1 supplies, transportation, equipment, and related
- 2 services;
- 3 (3) Wages or salaries of cast, crew, and musicians;
- 4 (4) Costs of photography, sound synchronization, lighting,
- 5 and related services;
- 6 (5) Costs of editing, visual effects, music, other post-
- 7 production, and related services;
- 8 (6) Rentals and fees for use of local facilities and
- 9 locations, including rentals and fees for use of state
- 10 and county facilities and locations that are not
- 11 subject to general excise tax under chapter 237 or
- 12 income tax under this chapter;
- 13 (7) Rentals of vehicles and lodging for cast and crew;
- 14 (8) Airfare for flights to or from Hawaii, and interisland
- 15 flights;
- 16 (9) Insurance and bonding;
- 17 (10) Shipping of equipment and supplies to or from Hawaii,
- 18 and interisland shipments; and
- 19 (11) Other direct production costs specified by the
- 20 department in consultation with the department of
- 21 business, economic development, and tourism;



1 provided that any government-imposed fines, penalties, or
2 interest that are incurred by a qualified production within the
3 State shall not be "qualified production costs".

4 SECTION 3. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 4. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect on July 1, 2019.

10



Report Title:

Economic Development; Motion Picture, Digital Media, and Film
Production Income Tax Credit; Cap Repeal

Description:

Repeals the annual \$35,000,000 rolling cap for the motion
picture, digital media, and film production income tax credit.
(Proposed SD1)

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not legislation or evidence of legislative intent.*

