
A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1 PART I

2 SECTION 1. Section 235-17, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "**§235-17 Motion picture, digital media, and film**

5 **production income tax credit.** (a) Any law to the contrary
6 notwithstanding, there shall be allowed to each taxpayer subject
7 to the taxes imposed by this chapter, an income tax credit that
8 shall be deductible from the taxpayer's net income tax
9 liability, if any, imposed by this chapter for the taxable year
10 in which the credit is properly claimed. The amount of the
11 credit shall be:

12 (1) Twenty per cent of the qualified production costs
13 incurred by a qualified production in any county of
14 the State with a population of over seven hundred
15 thousand; or

16 (2) Twenty-five per cent of the qualified production costs
17 incurred by a qualified production in any county of



1 the State with a population of seven hundred thousand
2 or less.

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

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

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

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

20 (b) The credit allowed under this section shall be claimed
21 against the net income tax liability for the taxable year. For



1 the purposes of this section, "net income tax liability" means
2 net income tax liability reduced by all other credits allowed
3 under this chapter.

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

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

- 15 (1) Meet the definition of a qualified production
16 specified in subsection (m);
- 17 (2) Have qualified production costs totaling at least
18 \$200,000;
- 19 (3) Provide the State a qualified Hawaii promotion, which
20 shall be at a minimum, a shared-card, end-title screen
21 credit, where applicable;



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



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

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



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

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

6 (i) The department of business, economic development, and
7 tourism shall:

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

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

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

19 (4) Submit a report to the legislature no later than
20 twenty days prior to the convening of each regular
21 session detailing the non-aggregated qualified



1 production costs that form the basis of the tax credit
2 claims and expenditures, itemized by taxpayer, in a
3 redacted format to preserve the confidentiality of the
4 taxpayers claiming the credit.

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

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

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

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



1 (1) The total amount of tax credits allowed under this
2 section in any particular year shall be [~~\$35,000,000,~~
3 \$ _____]; however, if the total amount of credits applied for
4 in any particular year exceeds the aggregate amount of credits
5 allowed for such 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 year; provided that no excess shall be
8 allowed to be claimed after December 31, [~~2025-~~] _____.

9 (m) For the purposes of this section:

10 "Commercial":

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

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

17 (3) Does not include an advertising message with
18 Internet-only distribution.

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

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

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

18 "Qualified production":

19 (1) Means a production, with expenditures in the State,
20 for the total or partial production of a feature-
21 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), each of the
12 aforementioned qualified production categories shall
13 constitute separate, individual qualified productions;
14 and

- 15 (2) Does not include:
- 16 (A) News;
 - 17 (B) Public affairs programs;
 - 18 (C) Non-national magazine or talk shows;
 - 19 (D) Televised sporting events or activities;
 - 20 (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 or income tax under this
9 chapter and that have not been financed by any investments for
10 which a credit was or will be claimed pursuant to section
11 235-110.9. Qualified production costs include but are not
12 limited to:

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

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

19 (3) Wages or salaries of cast, crew, and musicians;

20 (4) Costs of photography, sound synchronization, lighting,
21 and related services;



- 1 (5) ~~[Costs]~~ Actual costs, plus an additional per
2 cent of editing, visual effects, music, other post-
3 production, and related services~~[+]~~ that are performed
4 at qualified post-production facilities as defined in
5 this section; provided that the department may adopt
6 rules pursuant to chapter 91 to establish additional
7 criteria to determine which qualified post-production
8 facilities are included as qualified production costs;
- 9 (6) Rentals and fees for use of local facilities and
10 locations, including rentals and fees for use of state
11 and county facilities and locations that are not
12 subject to general excise tax under chapter 237 or
13 income tax under this chapter;
- 14 (7) Rentals of vehicles and lodging for cast and crew;
- 15 (8) Airfare for flights to or from Hawaii, and interisland
16 flights;
- 17 (9) Insurance and bonding;
- 18 (10) Shipping of equipment and supplies to or from Hawaii,
19 and interisland shipments; and



1 (11) Other direct production costs specified by the
2 department in consultation with the department of
3 business, economic development, and tourism;
4 provided that any government-imposed fines, penalties, or
5 interest that are incurred by a qualified production within the
6 State shall not be "qualified production costs".

7 PART II

8 SECTION 2. Act 88, Session Laws of Hawaii 2006, as amended
9 by Act 89, Session Laws of Hawaii 2013, as amended by Act 143,
10 Session Laws of Hawaii 2017, is amended by amending section 4 to
11 read as follows:

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

14 (1) Section 2 of this Act shall apply to qualified
15 production costs incurred on or after July 1, 2006,
16 and before January 1, [~~2026~~] _____; and

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



1 PART III

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

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

7 SECTION 5. This Act shall take effect on July 1, 2112;
8 provided that part I shall apply to taxable years beginning
9 after December 31 of the prior calendar year.



S.B. NO. 365
S.D. 2
H.D. 1
PROPOSED

Report Title:

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

Description:

Changes the annual \$35,000,000 rolling cap and \$15,000,000 per
qualified production cap for the Motion Picture, Digital Media,
and Film Production Income Tax Credit. Authorizes an additional
percentage of the Tax Credit for qualified production costs.
Extends the Tax Credit's repeal date. (SB365 HD1 PROPOSED)

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not legislation or evidence of legislative intent.*

