

GOV. MSG. NO. 1318

EXECUTIVE CHAMBERS

DAVID Y. IGE governor

June 27, 2022

The Honorable Ronald D. Kouchi, President and Members of the Senate Thirty-First State Legislature State Capitol, Room 409 Honolulu, Hawai'i 96813 The Honorable Scott K. Saiki, Speaker and Members of the House of Representatives Thirty-First State Legislature State Capitol, Room 431 Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 27, 2022, the following bill was signed into law:

HB1982 HD2 SD2 CD1

RELATING TO TAXES. ACT 217

Sincerely,

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DAVID Y. IGE Governor, State of Hawai'i

ORIGINAL

Approved by the Governor on ______JUN 2 7 2022

HOUSE OF REPRESENTATIVES THIRTY-FIRST LEGISLATURE, 2022 STATE OF HAWAII

ACT 217 H.B. NO. ¹⁹⁸² H.D. 2 S.D. 2 G.D. 1

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	" <u>\$237-</u> Withholding of tax by persons claiming the
5	motion picture, digital media, and film production income tax
6	credit. (a) Every person making payment to a loan-out company
7	and claiming a tax credit pursuant to section 235-17 shall
8	deduct and withhold an amount equal to the highest rate of tax
9	under this chapter plus any applicable county surcharge for all
10	payments made to the loan-out company for services performed in
11	the State. The amounts withheld shall be remitted pursuant to
12	subsection (b). The amounts withheld under this section shall
13	be deemed to be a general excise tax withholding for the benefit
14	of the loan-out company performing the service.
15	(b) Every person subject to subsection (a) shall make a
16	return of the amount withheld and file the return with the
17	department of taxation no later than the twentieth day of the

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1	calendar month immediately following the month in which the
2	payment was made to the loan-out company. The taxes withheld
3	shall be remitted with the return. The department of taxation
4	shall prescribe the forms and procedures to administer this
5	section.
6	(c) All taxes withheld pursuant to this section shall be
7	held in trust by the person withholding for the State. If any
8	person required to withhold and remit taxes under this section
9	fails to withhold or remit the taxes, the person shall be liable
10	for the failure as provided in section 235-64."
11	SECTION 2. Section 237-1, Hawaii Revised Statutes, is
12	amended by adding a new definition to be appropriately inserted
13	and to read as follows:
14	"Loan-out company" means a wholly-owned entity formed on
15	behalf of a person that serves as a separate entity that
16	constitutes the person's means of entering a contract with a
17	third party for the purpose of providing services to the third
18	party."
19	SECTION 3. Section 235-17, Hawaii Revised Statutes, is
20	amended to read as follows:

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1	"§235-17 Motion picture, digital media, and film
2	production income tax credit. (a) Any law to the contrary
3	notwithstanding, there shall be allowed to each taxpayer subject
4	to the taxes imposed by this chapter, an income tax credit that
5	shall be deductible from the taxpayer's net income tax
6	liability, if any, imposed by this chapter for the taxable year
7	in which the credit is properly claimed. The amount of the
8	credit shall be:
9	(1) [Twenty] <u>Twenty-two</u> per cent of the qualified
10	production costs incurred by a qualified production in
11	any county of the State with a population of over
12	seven hundred thousand; or
13	(2) [Twenty-five] <u>Twenty-seven</u> per cent of the qualified
14	production costs incurred by a qualified production in
15	any county of the State with a population of seven
16	hundred thousand or less.
17	A qualified production occurring in more than one county may
18	prorate its expenditures based upon the amounts spent in each
19	county, if the population bases differ enough to change the
20	percentage of tax credit.

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1 In the case of a partnership, S corporation, estate, or 2 trust, the tax credit allowable is for qualified production 3 costs incurred by the entity for the taxable year. The cost 4 upon which the tax credit is computed shall be determined at the 5 entity level. Distribution and share of credit shall be 6 determined by rule. 7 If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal 8 9 Revenue Code of 1986, as amended, no tax credit shall be allowed 10 for those costs for which the deduction is taken. 11 The basis for eligible property for depreciation of 12 accelerated cost recovery system purposes for state income taxes 13 shall be reduced by the amount of credit allowable and claimed. 14 (b) The credit allowed under this section shall be claimed

15 against the net income tax liability for the taxable year. For 16 the purposes of this section, "net income tax liability" means 17 net income tax liability reduced by all other credits allowed 18 under this chapter.

(c) If the tax credit under this section exceeds the
taxpayer's income tax liability, the excess of credits over
liability shall be refunded to the taxpayer; provided that no

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1	refunds or	payment on account of the tax credits allowed by this				
2	section shall be made for amounts less than \$1. All claims,					
3	including	any amended claims, for tax credits under this section				
4	shall be f	iled on or before the end of the twelfth month				
5	following	the close of the taxable year for which the credit may				
6	be claimed	l. Failure to comply with <u>any of</u> the foregoing				
7	provision	shall constitute a waiver of the right to claim the				
8	credit.					
9	(d)	To qualify for this tax credit, a production shall:				
10	(1)	Meet the definition of a qualified production				
11		specified in subsection [(m);] <u>(o);</u>				
12	(2)	Have qualified production costs totaling at least				
13		[\$200,000;] <u>\$100,000;</u>				
14	(3)	Provide the State a qualified Hawaii promotion, which				
15		shall be at a minimum, a shared-card, end-title screen				
16		credit, where applicable;				
17	(4)	Provide evidence of reasonable efforts to hire local				
18		talent and crew;				
19	(5)	Provide evidence when making any claim for products or				
20		services acquired or rendered outside of this State				
21		that reasonable efforts were unsuccessful to secure				

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1		and use comparable products or services within this
2		State;
3	(6)	Provide evidence of financial or in-kind contributions
4		or educational or workforce development efforts, in
5		partnership with related local industry labor
6		organizations, educational institutions, or both,
7		toward the furtherance of the local film and
8		television and digital media industries $[-]$;
9	(7)	Be compliant with all applicable requirements under
10		title 14, including tax return filing and payments;
11		and
12	(8)	Provide complete responses to the department of
13		taxation's inquiries and document requests, in the
14		form prescribed by the department, no later than
15		ninety days from the inquiry or request.
16	(e)	On or after July 1, 2006, no qualified production cost
17	that has	been financed by investments for which a credit was
18	claimed b	by any taxpayer pursuant to section 235-110.9 is
19	eligible	for credits under this section.
20	(f)	To receive the tax credit, the taxpayer shall first
21	prequalif	y the production for the credit by registering with the

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department of business, economic development, and tourism during
 the development or preproduction stage.

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

9 Every taxpayer claiming a tax credit under this (h) 10 section for a qualified production shall, no later than ninety 11 days following the end of each taxable year in which qualified 12 production costs were expended, submit a written, sworn 13 statement to the department of business, economic development, 14 and tourism[, together with a verification review by a qualified 15 certified public accountant using procedures prescribed by the 16 department of business, economic development, and tourism, 17 identifying:] that identifies:

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

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1	(2)	The amount of tax credits claimed pursuant to this
2		section, if any, in the previous taxable year; and
3	(3)	The number of total hires versus the number of local
4		hires by category and by county.
5	This info	rmation may be reported from the department of
6	business,	economic development, and tourism to the legislature
7	[in-redac	ted form] pursuant to subsection (i)(4).
8	(i)	The department of business, economic development, and
9	tourism s	hall:
10	(1)	Maintain records of the names of the taxpayers and
11		qualified productions thereof claiming the tax credits
12		under subsection (a);
13	(2)	Obtain and total the aggregate amounts of all
14		qualified production costs per qualified production
15		and per qualified production per taxable year;
16	(3)	Provide a letter to the director of taxation
17		specifying the amount of the tax credit per qualified
18		production for each taxable year that a tax credit is
19		claimed and the cumulative amount of the tax credit
20		for all years claimed; and

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1	(4)	Submit a report to the legislature no later than	
2		twenty days prior to the convening of each regular	
3		session detailing the non-aggregated qualified	
4		production costs that form the basis of the tax credit	
5		claims and expenditures, itemized by taxpayer, in a	
6		redacted format to preserve the confidentiality and	
7		that shall include the dollar amount claimed, name of	
8		company, and name of the qualified production of the	
9		taxpayers claiming the credit.	
10	<u>(j)</u>	Upon each determination required under [this]	
11	subsection[$_{ au}$] (i), the department of business, economic		
12	development, and tourism shall issue a letter to the taxpayer,		
13	regarding the qualified production, specifying the qualified		
14	production costs and the tax credit amount qualified for in each		
15	taxable y	year a tax credit is claimed[+]; provided that the	
16	departmer	t of business, economic development, and tourism shall	
17	issue the	e letter to the taxpayer no later than seven months	
18	after rec	ceipt of the taxpayer's statement under subsection (h).	
19	The taxpa	ayer for each qualified production shall file the letter	
20	with the	taxpayer's tax return for the qualified production to	
21	the depar	rtment of taxation. Notwithstanding the authority of	

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1 the department of business, economic development, and tourism 2 under this section, the director of taxation may audit and 3 adjust the tax credit amount to conform to the information filed 4 by the taxpayer. 5 (k) Each taxpayer claiming a tax credit under this section 6 shall submit to the department of business, economic 7 development, and tourism a fee for the motion picture, digital 8 media, and film production income tax credit in an amount equal 9 to 0.2 per cent of the tax credit claimed by the qualified 10 production no later than the deadline stated in subsection (c). 11 The department of business, economic development, and tourism 12 may prescribe the form and method by which this fee is remitted, 13 including through electronic means. The fees collected under 14 this subsection shall be deposited into the Hawaii film and creative industries development special fund under section 201-15 16 113. 17 [(j)] (1) Total tax credits claimed per qualified 18 production shall not exceed [\$15,000,000.] \$17,000,000. 19 [(k)] (m) Qualified productions shall comply with 20 subsections (d), (e), (f), [and] (h) [-,], and (k).

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1	[(l)] <u>(n)</u> The total amount of tax credits allowed under			
2	this section in any particular year shall be \$50,000,000;			
3	however, if the total amount of credits applied for in any			
4	particular year exceeds the aggregate amount of credits allowed			
5	for [such] that 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] the subsequent year; provided that no			
8	excess shall be allowed to be claimed after December 31, $[\frac{2025}{2025}]$			
9	<u>2032.</u>			
10	[(m)] <u>(o)</u> 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 distribution.			
20	"Digital media" means production methods and platforms			
21	directly related to the creation of cinematic imagery and			

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content, specifically using digital means, including but not
 limited to digital cameras, digital sound equipment, and
 computers, to be delivered via film, videotape, interactive game
 platform, or other digital distribution media.

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-

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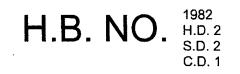
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1		length motion picture, short film, made-for-television			
2		movie, commercial, music video, interactive game,			
3		television series pilot, single season (up to			
4		twenty-two episodes) of a television series regularly			
5		filmed in the State (if the number of episodes per			
6		single season exceeds twenty-two, additional episodes			
7		for the same season shall constitute a separate			
8		qualified production), television special, single			
9		television episode that is not part of a television			
10		series regularly filmed or based in the State,			
11		national magazine show, or national talk show. For			
12		the purposes of subsections (d) and [(j),] <u>(l),</u> each			
13		of the aforementioned qualified production categories			
14		shall constitute separate, individual qualified			
15		productions; and			
16	(2)	Does not include:			
17		(A) News;			
18		(B) Public affairs programs;			
19		(C) Non-national magazine or talk shows;			
20		(D) Televised sporting events or activities;			
21		(E) Productions that solicit funds;			

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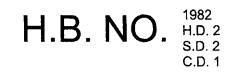
1		(F)	Productions produced primarily for industrial,
2			corporate, institutional, or other private
3			purposes; and
4		(G)	Productions that include any material or
5			performance prohibited by chapter 712.
6	"Qual	ifie	d production costs" means the costs incurred by a
7	qualified	prod	uction within the State that are subject to the
8	general ex	cise	tax under chapter 237 at the highest rate of tax
9	or income	tax	under this chapter if the costs are not subject to
10	general ex	kcise	tax and that have not been financed by any
11	investment	ts fo	r which a credit was or will be claimed pursuant
12	to section	n 235	-110.9. Qualified production costs include but
13	are not l:	imite	d to:
14	(1)	Cost	s incurred during preproduction such as location
15		scou	ting and related services;
16	(2)	Cost	s of set construction and operations, purchases or
17		rent	als of wardrobe, props, accessories, food, office
18		supp	olies, transportation, equipment, and related
19		serv	vices;
20	(3)	Wage	es or salaries of cast, crew, and musicians;

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1	(4)	Costs of photography, sound synchronization, lighting,
2		and related services;
3	(5)	Costs of editing, visual effects, music, other post-
4		production, and related services;
5	(6)	Rentals and fees for use of local facilities and
6		locations, including rentals and fees for use of state
7		and county facilities and locations that are not
8		subject to general excise tax under chapter 237 or
9		income tax under this chapter;
10	(7)	Rentals of vehicles and lodging for cast and crew;
11	(8)	Airfare for flights to or from Hawaii, and interisland
12		flights;
13	(9)	Insurance and bonding;
14	(10)	Shipping of equipment and supplies to or from Hawaii,
15		and interisland shipments; and
16	(11)	Other direct production costs specified by the
17		department in consultation with the department of
18		business, economic development, and tourism;
19	provided	that any government-imposed fines, penalties, or
20	interest	that are incurred by a qualified production within the
21	State sha	all not be "qualified production costs". <u>"Qualified</u>

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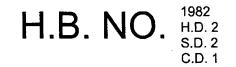
1	production	costs" does not include any costs funded by any
2	grant, forg	givable loan, or other amounts not included in gross
3	income for	purposes of this chapter."
4	SECTIO	ON 4. Act 88, Session Laws of Hawaii 2006, as amended
5	by Act 89,	Session Laws of Hawaii 2013, as amended by Act 143,
6	Session Lav	vs of Hawaii 2017, is amended by amending section 4 to
7	read as fol	llows:
8	"SECTI	ION 4. This Act shall take effect on July 1, 2006;
9	provided th	nat:
10	(1) 5	Section 2 of this Act shall apply to qualified
11	I	production costs incurred on or after July 1, 2006,
12	ä	and before January 1, [2026;] <u>2033;</u> and
13	(2)	This Act shall be repealed on January 1, [2026,] 2033,
14		and section 235-17, Hawaii Revised Statutes, shall be
15	:	reenacted in the form in which it read on the day
16	3	before the effective date of this Act."
17	SECTI	ON 5. The department of taxation may establish two
18	full-time	equivalent (2.0 FTE) permanent tax auditor positions
19	to examine	claims for the motion picture, digital media, and
20	film produ	ction income tax credit pursuant to section 235-17,
21	Hawaii Rev	ised Statutes, and other tax expenditures.

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1 SECTION 6. There is appropriated out of the general 2 revenues of the State of Hawaii the sum of \$153,334 or so much 3 thereof as may be necessary for fiscal year 2022-2023 to carry 4 out the purposes of this Act, including the payment of salaries 5 of the tax auditor positions authorized pursuant to section 5 of 6 this Act. 7 The sum appropriated shall be expended by the department of 8 taxation for the purposes of this Act. 9 SECTION 7. The department of business, economic 10 development, and tourism shall establish one full-time 11 equivalent (1.0 FTE) permanent program specialist position to 12 review and certify applications for the motion picture, digital 13 media, and film production income tax credit pursuant to section 14 235-17, Hawaii Revised Statutes, and other tax credit 15 applications submitted to the department for approval. 16 SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$76,666 or so much 17 18 thereof as may be necessary for fiscal year 2022-2023 to carry 19 out the purposes of this Act, including the payment of the 20 salary of the program special position established pursuant to section 7 of this Act. 21

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The sum appropriated shall be expended by the department of
 business, economic development, and tourism for the purposes of
 this Act.

4 SECTION 9. Statutory material to be repealed is bracketed5 and stricken. New statutory material is underscored.

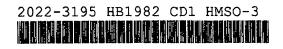
6 SECTION 10. This Act shall take effect on July 1, 2022;
7 provided that sections 1, 2, 3, and 4 of this Act shall take
8 effect on January 1, 2023.

APPROVED this 27th day of June

. 2022

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GOVERNOR OF THE STATE OF HAWAII



HB No. 1982, HD 2, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 03, 2022 Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.

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Scott K. Saiki Speaker House of Representatives

The Li Ilt

Brian L. Takeshita Chief Clerk House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022 Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate

of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.

President of the Schate

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Clerk of the Senate