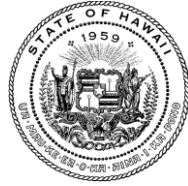


DAVID Y. IGE  
GOVERNOR

JOSH GREEN M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

To: The Honorable Glenn Wakai, Chair;  
The Honorable Bennette E. Misalucha, Vice Chair;  
and Members of the Senate Committee on Energy, Economic Development, and  
Tourism

From: Isaac W. Choy, Director  
Department of Taxation

Date: Monday, March 14, 2022  
Time: 3:00 P.M.  
Place: Conference Room 224 and Via Video Conference, State Capitol

**Re: H.B. 1982, H.D. 2, Relating to Taxes**

The Department of Taxation (Department) offers the following comments regarding H.B. 1982, H.D. 2, for your consideration. The measure has a defective effective date of July 1, 2050. With respect to tax administration. H.B. 1982, H.D. 2, does the following:

- Establishes a 10 percent income tax withholding requirement for all payments to loan-out companies for services performed in Hawaii for persons claiming the motion picture, digital media, and film production income tax credit (Film Credit) under section 235-17, Hawaii Revised Statutes;
- Prohibits the defense against the penalty erroneous claim for refund or credit if the claim for refund was generated by a tax credit and lowers the penalty for the erroneous claim for refund or credit generated by a tax credit to 10 percent;
- Authorizes the Department to impose fees for the processing of Film Credit Applications with the fees collected going into the Tax Administration Special Fund (TASF);
- Requires that taxpayers claiming the Film Credit to withhold and remit to the Department within 30 calendar days 4.5 percent of payments made to loan-out companies to the credit of the general excise tax (GET) account of the loan-out company;
- Amends the TASF to allow for the deposit of Film Credit application fees; and
- Authorizes the Department to establish 4 FTE auditor positions to examine the Film Credit claims and other tax expenditures.

The Department supports the amendment to the erroneous claim for refund penalty. Although the amendment disallows the reasonable basis defense, the penalty imposed is lowered from 20 to 10 percent.

Finally, the Department notes that it is able to administer the measure as currently written, provided that the withholding requirements on payments made to loan-out companies is made effective no earlier than July 1, 2022.

Thank you for the opportunity to testify on this measure.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented to the  
Senate Committee on Energy, Economic Development and Tourism  
Monday, March 14, 2022 at 3:00 p.m.

by

Christopher P. Lee, Founder/Director, Academy for Creative Media System  
on behalf of

Vassilis L. Syrmos, Vice President for Research and Innovation  
University of Hawai'i System

HB 1982 HD2 – RELATING TO TAXES

Chair Wakai, Vice Chair Misalucha, and Members of the Committee:

The University of Hawai'i (UH) supports the intent of HB 1982 HD2 to enhance Hawai'i's successful motion picture/television/streaming production industry with changes to the current film production tax credit. In particular, UH strongly supports the extension of the sunset date of the credit from December 31, 2025 to December 31, 2032.

A stable, reliable credit is essential to continuing the growth of this vital diversification of Hawai'i's economy.

Thank you for the opportunity to testify on this measure.



# DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

DAVID Y. IGE  
GOVERNOR  
MIKE MCCARTNEY  
DIRECTOR  
CHUNG I. CHANG  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
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Statement of  
**MIKE MCCARTNEY**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT AND TOURISM**

Monday, March 14, 2022  
3:00 PM  
State Capitol, Conference Room 224

In consideration of  
**HB1982, HD2**  
**RELATING TO TAXES.**

Chair Wakai, Vice Chair Misalucha and members of the Committee.

The Department of Business, Economic Development and Tourism (DBEDT) supports HB1982, HD2, which amends the Motion Picture, Digital Media, and Film Production Income Tax Credit, §235-17, Hawaii Revised Statutes, by extending the sunset date to December 31, 2032, providing business certainty for production and infrastructure development, and adds requirements for DBEDT to provide dollar amounts claimed, name of the company, and name of the qualified production in its annual reporting to the Legislature. The department also supports the establishment of additional positions for the Department of Taxation (DoTAX) to support reviews of HRS 235-17 claims.

We defer to DoTAX on those sections related to the amendments changing financial requirements for obtaining the credit, including loan out specific withholding amounts and payment with filings, prohibiting the defense of erroneous claims, and amending the purpose section of the tax administration special fund.

The Motion Picture, Digital Media, and Film Production Income Tax Credit, §235-17, Hawaii Revised Statutes, is an essential tool to the state's economic recovery efforts amidst this global pandemic. 2021 was another record year for production for the state with \$423M in direct expenditures and nearly 4,500 jobs.

We recognize the value of the film tax credit program and its catalytic role in providing skilled, high paying jobs and the infusion of capital into small businesses who are not part of the industry but provide much needed resources, supplies, food products and services.

As part of our diversification landscape, Hawaii's creative economy is anchored by the film and media industries. Maintaining the film tax credit program is crucial to attracting public and private investment to build a new multi-stage facility, as well as regional studio spaces for local production use.

DBEDT will continue to work with the Legislature and industry to ensure this important economic driver continues to build a sustainable film and entertainment industry.

Thank you for the opportunity to testify.



The Senate  
The Thirty-First Legislature  
Regular Session of 2022

COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT AND TOURISM  
Sen. Glenn Wakai, Chair  
Sen. Bennette E. Misalucha, Vice Chair

RE: HB 1982, HD 2 RELATING TO TAXES

Date: Monday, March 14, 2022  
Time: 3:00 p.m.  
Conference Room 224  
State Capitol  
415 South Beretania Street

March 13, 2022

From: Roy Tjioe and Ricardo Galindez  
Island Film Group  
99-1245 Halawa Valley St.  
Aiea, HI 96701  
808-536-7955

Aloha Chair Wakai and Vice Chair Misalucha, and Members of the Committee:

### **Our Background**

Island Film Group is a locally owned and operated production company. We began working in Hawaii's film and television industry in 2001 as attorneys at Goodwill Anderson Quinn & Stifel, where we represented filmmakers and other production companies. Since our formation of Island Film Group in 2007, we have been working full-time as producers of feature films such as "Princess Ka'iulani" and "Soul Surfer", network and cable

television movies and series, as well as a large number of commercial productions.

## **We SUPPORT**

(a) The proposed withholding of income tax on payments to loan-out companies as set forth in Section 1 of the Bill.

(b) The proposed language in Section 4 that extends the year in which excess tax credits may be claimed from 2025 to 2032.

## **We STRONGLY OPPOSE**

(a) The proposed deletion of the good faith defense as set forth in Section 2. The proposed language is a denial of Due Process in violation of the State and Federal Constitutions. The proposed language is also unnecessary given that the good faith defense requires a showing by the taxpayer that it has met its burden of proof regarding the reasonableness of the tax credit claim. The proposed language would harshly eliminate the good faith defense of innocent mistakes where the excessive amount is the result of inadvertence or mathematical error.

(b) The proposed language in Section 4 that seeks to impose fees for processing qualified production applications for the Film Tax Credit (the Draft appears to inadvertently omit the word “credit”). The assessment of additional fees for processing the tax credit applications is in addition to the educational or workforce development contribution which is already required. Mandating both simply reduces the value of the tax credit further.

(c) The proposed language in Section 4 which seeks to require DBEDT to report to the legislature certain information reported by the taxpayer in unredacted form, in particular the dollar amount claimed, the name of the company and the name of the qualified production. While we have no objection to the information being provided to the legislature, we are deeply concerned that the media will obtain this information and use it to smear qualified production companies in the same manner that projects under Act 221 were unfairly targeted.

(d) The proposed language in Section 5 to use the Tax Administration Special Fund to process qualified production applications for the motion picture, digital media, and film production income tax credit (“the Film Tax Credit”). This function has been and should be handled by DBEDT/the Hawaii State Film Office which has a deep understanding of the film and television industries and which is responsible for the economic development of Hawaii.

(e) The language in section 6 allowing the Department of Taxation to establish four full-time equivalent tax auditor positions to examine Film Tax Credit claims. Currently, Film Tax Credit claimants are already required to have their claim reviewed by an independent CPA at substantial cost. If the Department of Taxation is allowed to add four full time auditors, then the CPA review should be eliminated.

We PROPOSE

(a) Since the language regarding income tax withholding for payments to loan out companies is limited “for services performed in the State” under Section 1, then to be consistent, the same language should be included in Section 4(m), relating to GE tax withholding for payments to loan out companies.

Section 4(m) should be further amended to clarify that gross revenues (i.e. project financing) received by local production companies shall be subject to a GE tax rate of 0.5%. That is the GE tax rate that governed film, television and commercial productions for the past decade until the Department of Taxation unilaterally changed the rate to 4.5% in November, 2019. Since the mainland studios do not pay any GE tax because their project financing is structured as investments into wholly owned production companies rather than payments, this language will help provide a level playing field for local independent production companies while having a minimal financial impact to the State.

Section 4(m) should therefore be amended to read as follows (new text underlined):

(m) Every person making payment to a loan-out company shall withhold an amount equal to 4.5 per cent of qualified production costs for services performed in the State; provided that the amount withheld shall be remitted to the department of taxation to the credit of the general excise tax account of the loan-out company to whom the qualified production costs were paid or will be paid; provided further that gross revenues received by qualified productions shall be subject to general excise tax at the rate of 0.5 per cent.

(b) That qualified productions with qualified production costs at or below \$1,000,000 need not submit their tax credit claim for verification review by a qualified certified public accountant.

(continued on next page)



(c) That Section 4(d)(2) be amended to reduce the amount of production costs necessary to qualify for the tax credit from \$200,000 to \$100,000. We believe this will amendment will make it more possible for local filmmakers to access the Film Tax Credit.

Me ke aloha,

Two handwritten signatures in black ink. The first signature is on the left and the second is on the right.

Roy Tjioe and Ricardo Galindez  
Co-Founders  
Island Film Group  
Honolulu, Hawaii

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, GENERAL EXCISE, ADMINISTRATION, Withholding of Tax by Persons Claiming Film Credit, Elimination of Reasonable Basis Defense for Overclaiming Credits

BILL NUMBER: HB 1982 HD 2

INTRODUCED BY: House Committee on Finance

EXECUTIVE SUMMARY: Requires every person making payment to a loan-out company and claiming the film tax credit to withhold payments to loan-out companies. Prohibits the defense of erroneous claim for a refund or credit if the claim for refund was generated by a tax credit and sets the penalty for such case to ten per cent. Requires the report by DBEDT to include the dollar amount claimed, name of the company, and name of the qualified production of the taxpayer. Requires qualified taxpayers to withhold a certain amount and remit that amount. Amends the use of the tax administration special fund. Authorizes the department of taxation to establish four full-time equivalent tax auditor positions. We do not recommend passage of the penalty enhancements, which would apply to other credits as well. We also have suggested technical amendments.

SYNOPSIS: Adds a new section to chapter 235, HRS, requiring every person claiming a credit under section 235-17, HRS, to withhold 10% of all payments to loan-out companies for services performed in Hawaii and to remit the withholding to the Department of Taxation within 30 days from the date of payment.

Amends section 231-36.8, HRS, to impose a penalty at a reduced rate of 10% for erroneous claims for refund or credit that are generated by a tax credit, and to provide that the penalty is applied whether or not the taxpayer had a reasonable basis in law for making the claim.

Amends section 235-1, HRS, by adding a new definition of “loan-out company” as a wholly-owned entity formed on behalf of a person that serves as a separate entity that constitutes the person's means of entering a contact with a third party for the purpose of providing services to the third party.

Amends section 235-17, HRS, to add a provision requiring each qualified production to withhold an amount equal to 4.5% of qualified production costs; provided that the amount withheld shall be remitted to the department of taxation to the credit of the general excise tax account of the loan-out company to whom the qualified production costs were paid or will be paid. The amount withheld shall be remitted no later than thirty calendar days after the qualified production costs are paid or incurred. Taxpayers who fail to comply with this subsection shall be subject to the applicable interest and penalties pursuant to chapter 231 and section 235-104.

Makes additional technical and conforming amendments.

EFFECTIVE DATE: July 1, 2050

STAFF COMMENTS:

*Withholding Income Tax for Payments to Loan-Out Companies:* Apparently, this provision is meant to collect tax at the source because employees of loan-out companies have not been following the requirement to file an income tax return.

*Elimination of Reasonable Basis Defense to Penalty for Erroneous Credit Claim:* Because the tax laws are complex and often subject to interpretation, we do not believe a “strict liability” penalty of this type is appropriate. Such a penalty would penalize “innocent mistakes where the excessive amount is the result of inadvertence, mathematical error, or where otherwise defined as innocent.” It also should be kept in mind that this penalty enhancement applies to claims for **all tax credits**, not just the motion picture, digital media, and film production income tax credit pursuant to section 235-17, HRS. This could be particularly harsh as applied to lower-income families who attempted to but made mistakes in claiming welfare-type credits like the Earned Income Tax Credit (section 235-55.75, HRS), the Food/Excise Tax Credit (section 235-55.85, HRS), the credit for household and dependent care services (section 235-55.6, HRS), or the credit for low-income household renters (section 235-55.7, HRS).

*General Excise Tax Withholding:* We do not recommend that withholding of general excise tax be contained in an income tax section; it would be difficult or impossible for practitioners to find. Instead, we recommend amendment of section 237-44, HRS, which now requires withholding of general excise tax in the “entertainment business,” and which contains the necessary trust fund and derivative liability language. For example:

SECTION \_\_. Section 237-44, Hawaii Revised Statutes, is amended to read as follows:

“**§237-44 Entertainment business; loan-out companies.** (a) As used in this section:

"Admission" means the amount paid for admission to any place, including admission by season ticket or subscription, and also includes the amount paid for seats and tables, reserved or otherwise, and other similar accommodations.

"Cabaret" means any roof garden, cabaret, or other similar place furnishing a public performance, by or for any patron or guest who is entitled to be present during any portion of the performance, including any room in any hotel, restaurant, hall, or other public place where music and dancing privileges or any other entertainment are afforded the patrons in connection with the serving or selling of food, refreshment, or merchandise.

“Loan-out company” means the same as in section 235-1.

"Transient taxpayer" refers to any person subject to the tax imposed by this chapter who has no permanent place of business in the State.

(b) Every person receiving admissions for any circus, carnival, or any other place whatsoever at which a transient taxpayer is engaged in business (whether or not further admissions are charged inside the place, such further admissions, if any, being also subject to this section), shall

set aside from the admissions and hold in trust for the State five per cent of the admissions, or such lesser amount as the department of taxation shall approve as sufficient, to guarantee payment of the tax levied by this chapter on the transient taxpayer. The amount so required to be set aside from the admissions shall be deposited with the department promptly upon collection thereof, from time to time, for deposit by it in a special trust fund in the treasury of the State, there to remain until refunded upon voucher of the department, or until applied to the payment of the taxes guaranteed thereby with the consent of the person making the deposit, or until deposited in court pursuant to chapter 655 or the rules of court. The department may bring an action to obtain an adjudication of its right to apply the guarantee fund in payment of taxes and may deposit the fund in court to await the results of the adjudication, or may be sued by an interested person seeking to obtain the adjudication and may be ordered to make such deposit in court, notwithstanding that the department asserts a claim against the fund.

(c) If any person fails to deposit promptly the guarantee fund required by this section, the department may distrain upon the admissions or any bank account or other asset in which the same can be found, for the purpose of obtaining and depositing in the treasury the required guarantee fund.

(d) Whenever a transient taxpayer is engaged in business at any place for which admissions are charged, or at any cabaret whether or not admissions are charged, [or whenever a loan-out company is engaged for services performed or to be performed within the State,](#) the person engaging the transient taxpayer [or loan-out company](#) shall collect from the transient taxpayer, by withholding or otherwise, the tax levied by this chapter on the transient taxpayer, shall hold the tax in trust for the State, and shall return and pay over the tax to the proper collecting officer of the State in the manner and at the time required by this chapter, for the account of the transient taxpayer. If the person fails to do so, the person shall be liable to pay to the State the amount of the tax levied by this chapter on the transient taxpayer, together with penalties and interest as provided by law. The amount of the liability may be collected from the guarantee fund, if any, or may be assessed against and collected from the person so becoming liable in the same manner as if the tax had been levied upon the person.

Digested: 3/11/2022

**MOTION PICTURE ASSOCIATION, INC.**

1600 EYE STREET, NORTHWEST

WASHINGTON, D.C. 20006

(202) 293-1966

**TESTIMONY OF VANS STEVENSON IN SUPPORT OF  
HB1982 HD2**

**RELATING TO TAXES. - SUPPORT WITH AMENDMENTS  
BEFORE THE HAWAII'I SENATE COMMITTEE ON  
ENERGY, ECONOMIC DEVELOPMENT AND TOURISM**

**MONDAY, MARCH 14, 2022**

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Thank you, Chair Wakai, and members of the Senate Committee on Energy, Economic Development and Tourism.

My name is Vans Stevenson, and I serve as Senior Vice President for State Government Affairs for the Motion Picture Association (MPA).

MPA represents the major producers and distributors of motion pictures, television series and streaming productions: Netflix Studios; Paramount Global, Sony Pictures Entertainment Inc.; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc.

I appreciate the opportunity to provide this written testimony, on behalf of the MPA's member companies, in support of an extension of Hawaii's successful production tax credit program to 2032.

In the production location decision-making process, cost is the most important factor, and this program and its cost offsets have been a significant catalyst for the film, television and streaming productions that continue to create Hawaii's jobs and support Hawaii's businesses.

Since the inception of Hawaii's production tax credit program, the motion picture, television, and streaming industry has flourished, keeping Hawaii competitive in the face of strong global competition (*please see attached exhibit*). Annually, Hawaii manages to attract a steady flow of features, series, and streaming productions creating long-lasting ancillary benefits.

A review of only three television series and one motion picture feature for 2019 – 2020 reveals a very significant economic impact on Hawaii's economy. There was a total of 9,090 hires for these productions, which included 7,624 Hawaii residents, or 84% of the total cast and crew. These productions, together, spent more than \$141 million on wages and over \$55 million was spent with more than 1,700 Hawaii-based vendors.

There are substantial opportunities for Hawaii to continue to attract content and grow its base of good paying jobs, given the 600+ scripted streaming productions currently being produced. Many states are at production capacity due to the explosion of streaming production and there is a continued demand for streaming content.

The economic impact of the production industry has produced benefits throughout Hawaii. It is also felt across many business sectors. New and expanded businesses have followed because there are support services, which benefit from the industry but are not eligible to claim the tax credit. In addition to camera, lighting and audio equipment, production companies use a wide range of support services during production including catering, construction, transportation, accounting/payroll, and post-production. These ancillary business expansions have given rise to long-term capital investments, which help ensure the state's investments in this industry are sound.

An extension of Hawaii's successful production tax credit program sunset to 2032 provides a necessary element to continue to advance

opportunities for economic investment and enduring long-term job creation.

Thank you for your leadership and vision, which has allowed this motion picture, television, and streaming industry to continue to be a vibrant component of the state's economy.

In addition to expressing our support for the extension of this program, we respectfully propose some important changes to the legislation. These changes would preserve the objective of the bill's significant tax reporting and filing changes but provide the administrative efficiency and fairness necessary to maintain the competitiveness of Hawaii's production tax credit program.

The proposed amendments we seek to HB1982 HD2, included in the attached document in **bold with yellow highlight**, are as follows:

**Page 1 § 235 (a) and (b)** We propose changing the withholding percentage from 10% to the applicable rate.

We respectfully submit that charging the highest rate for withholding is burdensome, not consistent with the withholding requirements imposed on other taxpayers and would make Hawaii less competitive as a production destination. The forced withholding in our amendment at the applicable rate (instead of the highest rate), is a significant change to the existing statute and will facilitate and ensure tax collections on loan-outs. The amendment we propose will ensure Hawaii automatically receives the proper income tax withholding. The MPA's amendment in that same section also provides a realistic withholding reporting timeframe consistent with the MPA's proposed changes to the GET withholding reporting. The proposed amendment would require payments to be made the month following the date on which the payment was made to the loan-out company. The current legislation requires payments to be filed within 30 days of the payment. This 30-

day basis creates mandatory onerous remittance on a continual rolling basis, which is unworkable.

**Page 7 - § 235-17(g) (2)** We propose alternative language to contribute .01% of the credit capped at \$20,000 for processing applications.

HB1982 HD2's proposed uncapped, open ended processing fees imposed on production companies for the tax administration special fund is unprecedented and no similar fees exist in any jurisdiction worldwide to fund ongoing and unrelated government operations. The new fee, as proposed in the legislation, would allow the state to charge any price it decides for administration, creating significant uncertainty for productions. Accordingly, establishing such a requirement in Hawaii would put the state at a significant competitive disadvantage, relative to other major film and TV production locales. Currently, consumer demand for new film and TV content has resulted in a dramatic increase in production and studios are eager to find the most attractive locations for their next projects. We oppose a fee to solely fund DOTAX examiners as no other businesses are subject to this fee to process their returns or audits and such an open-ended administrative fee would harm Hawaii's efforts to draw the new studio productions that bring local jobs and investment.

**Page 9 - § 235-17 (m)** We propose deleting the proposed withholding of the GET at 4.5% and replacing it with .5% (the manufacturing rate) to be consistent with similarly situated taxpayers and - until recently - the longstanding treatment of film production services. This industry is clearly a manufacturer of content and motion picture, television and streaming production should return to being treated as such for purposes of the GET. We also added an amendment to this subdivision to mirror the existing statutory timeframe for taxpayer information reporting, which is not tied to the proposed unworkable timeframe of 30 days from when the payment was made. The current GET filing deadline is 20 days into the following month. Therefore, the change we propose mirrors that



requirement to file on the 20th day following the close of the month, so it's consistent with current procedures and workable for production companies. Under the legislation as currently drafted, production companies would have to be constantly making remittances, which is completely impractical. (E.g., remittances for all our June payments should be due by July 20. There shouldn't be a separate deadline for the payments made on June 1, June 6, June 12, June 19, and June 25.).

Our proposed modifications to the income tax and GET reporting will have no negative impact to the state but will allow for a stable compliance regime across the film industry, something important to state government and the industry.

We look forward to working with you and the legislature to ensure the production tax credit program's continued success. I therefore urge the committee's favorable approval of HB1982 HD2 with the MPA's proposed amendments.

Attachment

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

H.D. 2

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# A BILL FOR AN ACT

RELATING TO TAXES.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**"§235-\_\_\_\_\_ Withholding of tax by persons claiming the motion picture, digital media, and film production income tax credit.** (a) Every person making payment to a loan-out company and claiming a tax credit pursuant to section 235-17 shall deduct and withhold **at the applicable rate ten per cent of** all payments made to the loan-out company for services performed in the State. The amounts withheld shall be remitted pursuant to subsection (b). The amounts withheld under this section shall be deemed to be a tax withholding for the benefit of the loan-out company's employee actually performing the service.

(b) Every person subject to subsection (a) shall make a return of the amount withheld and file the return with the department of taxation no later than **the month following thirty**

calendar days from the date on which the payment was made to the loan-out company. The taxes withheld shall be remitted with the return. The department of taxation shall prescribe the forms and procedures to administer this section.

(c) All taxes withheld pursuant to this section shall be held in trust by the person withholding for the State. If any person required to withhold and remit taxes under this section fails to withhold or remit the taxes, the person shall be liable for the failure as provided in section 235-64."

SECTION 2. Section 231-36.8, Hawaii Revised Statutes, is amended to read as follows:

**"§231-36.8 Erroneous claim for refund or credit.** (a) If a claim for refund or credit with respect to tax is made for an excessive amount, the person making the claim shall be liable for a penalty in an amount equal to twenty per cent of the excessive amount; provided that there shall be no penalty assessed where the penalty calculation under this section results in an amount of less than \$400.

(b) It shall be a defense to the penalty under this section that the claim for refund or credit had a reasonable basis. A person claiming the reasonable basis defense shall have the burden of proof to demonstrate the reasonableness of the claim.

(c) If the excessive amount claimed for refund or credit was generated by a tax credit:

(1) The defense provided under subsection (b) shall not be applicable; and

(2) The penalty imposed under subsection (a) shall be at ten per cent.

~~[(e)]~~ (d) This section shall be construed in accordance with regulations and judicial interpretations given to section 6676 of the Internal Revenue Code.

~~[(d)]~~ (e) For purposes of this section:

"Excessive amount" means the amount by which the amount of the claim for refund or credit for any taxable year exceeds the amount of the claim allowable for such taxable year.

"Reasonable basis" means a standard of care used in tax reporting that is significantly higher than not frivolous or not patently improper. A reasonable basis position will be more than arguable and based on at least one or more authorities of either state or federal tax administration. A position is considered to have a reasonable basis if a reasonable and well-informed analysis by a person knowledgeable in tax law would lead that person to conclude that the position has approximately a one-in-four, or greater, likelihood of being sustained on the merits. A reasonable basis includes innocent mistakes where the excessive amount is the result of inadvertence, mathematical error, or where otherwise defined as innocent by the director pursuant to a formal pronouncement issued without regard to chapter 91.

~~[(e)]~~ (f) This section shall not apply to any portion of an underpayment on which a penalty is imposed under section 231-36.6."

SECTION 3. Section 235-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Loan-out company" means a wholly-owned entity formed on behalf of a person that serves as a separate entity that constitutes the person's means of entering a contact with a third party for the purpose of providing services to the third party."

SECTION 4. Section 235-17, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

A qualified production occurring in more than one county may prorate its expenditures based upon the amounts spent in each

county, if the population bases differ enough to change the percentage of tax credit.

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

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

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

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purposes of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed 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 refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1. All claims, including any amended claims, for tax credits under this section

shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

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

- (1) Meet the definition of a qualified production specified in subsection [~~(m)~~]; (n);
- (2) Have qualified production costs totaling at least \$200,000;
- (3) Provide the State a qualified Hawaii promotion, which shall be at a minimum, a shared-card, end-title screen credit, where applicable;
- (4) Provide evidence of reasonable efforts to hire local talent and crew;
- (5) Provide evidence when making any claim for products or services acquired or rendered outside of this State that reasonable efforts were unsuccessful to secure and use comparable products or services within this State; and
- (6) Provide evidence of financial or in-kind contributions or educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both, toward the furtherance of the local film and television and digital media industries.

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

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

(g) The director of taxation shall prepare forms as may be necessary to claim a credit under this section. The director may also [~~require~~]:

(1) Require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section [~~and may adopt~~];

(2) Impose fees not to exceed .01 % of the production tax credit up to a maximum of \$20,000 per production or series for processing qualified production applications for the motion picture, digital media, and film production income tax to be deposited into the tax administration special fund established pursuant to section 235-20.5; and

(3) Adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

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

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

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

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



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

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

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

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

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

(4) Submit a report to the legislature no later than twenty days prior to the convening of each regular session detailing the non-aggregated qualified production costs that form the basis of the tax credit claims and expenditures, itemized by taxpayer, in a redacted format to preserve the confidentiality and which shall include the dollar amount claimed, name of company, and name of the qualified production of the taxpayers claiming the credit.

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

the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

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

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

(l) The total amount of tax credits allowed under this section in any particular year shall be \$50,000,000; however, if the total amount of credits applied for in any particular year exceeds the aggregate amount of credits allowed for ~~[such]~~ that year under this section, the excess shall be treated as having been applied for in the subsequent year and shall be claimed in ~~[such]~~ the subsequent year; provided that no excess shall be allowed to be claimed after December 31, ~~[2025.]~~ 2032.

(m) Every person making payment to a loan-out company shall withhold an amount equal to 4.5 per cent of qualified production costs; provided that the amount withheld shall be remitted to the department of taxation to the credit of the general excise tax account of the loan-out company to whom the qualified production costs were paid or will be paid. The amount withheld shall be remitted on the 20th day following the close of the month no later than thirty calendar days after the qualified production costs are paid or incurred. Taxpayers who fail to comply with this subsection shall be subject to the applicable interest and penalties pursuant to chapter 231 and section 235-104.

~~[-(m)]~~ (n) For the purposes of this section:

"Commercial":

- (1) Means an advertising message that is filmed using film, videotape, or digital media, for dissemination via television broadcast or theatrical distribution;
- (2) Includes a series of advertising messages if all parts are produced at the same time over the course of six consecutive weeks; and
- (3) Does not include an advertising message with Internet-only distribution.

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

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

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

"Qualified production":

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

(2) Does not include:

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

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

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

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

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

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

(5) Costs of editing, visual effects, music, other post-production, and related services;

(6) Rentals and fees for use of local facilities and locations, including rentals and fees for use of state and county facilities and locations that are not subject to general excise tax under chapter 237 or income tax under this chapter;

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

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

(9) Insurance and bonding;

(10) Shipping of equipment and supplies to or from Hawaii, and interisland shipments; and

(11) Other direct production costs specified by the department in consultation with the department of business, economic development, and tourism;

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

SECTION 5. Section 235-20.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The moneys in the fund shall be used for the following purposes:

(1) Issuing comfort letters, letter rulings, written opinions, and other guidance to taxpayers;

~~[(2) Issuing certificates under [section] 235-110.9;]~~

(2) Processing qualified production applications for the motion picture, digital media, and film production income tax credit pursuant to section 235-17;

(3) Administering the operations of the special enforcement section;

(4) Funding support staff positions in the special enforcement section; and

(5) Developing, implementing, and providing taxpayer education programs, including tax publications."

~~SECTION 6. The department of taxation may establish four full-time equivalent (4.0 FTE) tax auditor positions to examine claims for the motion picture, digital media, and film production income tax credit pursuant to section 235-17, Hawaii Revised Statutes, and other tax expenditures.~~

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

SECTION 8. This Act shall take effect on July 1, 2050.

**Report Title:**

Motion Picture, Digital Media, and Film Production Tax Credit; Loan-out Companies; Qualified Productions; Withholdings; Tax Administration Special Fund; Positions

**Description:**

Requires every person making payment to a loan-out company and claiming the film tax credit to withhold payments to loan-out companies. Prohibits the defense of erroneous claim for a refund or credit if the claim for refund was generated by a tax credit and sets the penalty for such case to ten per cent. Requires the report by DBEDT to include the dollar amount

claimed, name of the company, and name of the qualified production of the taxpayer. Requires qualified taxpayers to withhold a certain amount and remit that amount. Amends the use of the tax administration special fund. ~~Authorizes the department of taxation to establish four full-time equivalent tax auditor positions.~~ Effective 7/1/2050. (HD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

**HB-1982-HD-2**

Submitted on: 3/12/2022 3:40:50 PM

Testimony for EET on 3/14/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

All Taxes are illegal!!!



**HB-1982-HD-2**

Submitted on: 3/13/2022 11:57:59 AM

Testimony for EET on 3/14/2022 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sandie Wong	Individual	Comments	Remotely Via Zoom

Comments:

I support the extension of the sunset from 2025 to 2032. I request that the bill be amended to preserve the good faith defense and to adopt the proposed amendment of Island Film to Section 4(m) on page 12, line 20. Mahalo.