

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau

P.O. BOX 259

HONOLULU, HAWAII 96809

PHONE NO: (808) 587-1540

FAX NO: (808) 587-1560

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 795, S.D. 2, H.D. 1, Relating to Taxes

BEFORE THE:

House Committee on Finance

DATE: Thursday, March 30, 2023

TIME: 3:00 p.m.

LOCATION: State Capitol, Room 308

Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 795, S.D. 2, H.D. 1, for your consideration.

S.B. 795, S.D. 2, H.D. 1, amends section 235-17(d), Hawaii Revised Statutes (HRS), relating to the motion picture, digital media, and film production income tax credit ("film credit"), by obligating taxpayers to provide evidence of reasonable efforts to comply with all applicable requirements under title 14, HRS, and requiring that taxpayers be given notice and an opportunity to cure any of the requirements in subsection (d) within 30 days of receiving a notice from the Department. The bill has a defective effective date of January 6, 2050.

The Department notes that it estimates no material revenue impact as a result of this measure and that it is able to administer this measure upon approval.

Thank you for the opportunity to provide comments on this measure.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**
KA 'OIHANA HO'OMOHALA PĀ'OIHANA, 'IMI WAIWAI
A HO'OMĀKA'IKĀ'I

JOSH GREEN, M.D.
GOVERNOR

CHRIS J. SADAYASU
DIRECTOR

DANE K. WICKER
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
Web site: dbedt.hawaii.gov

Telephone: (808) 586-2355
Fax: (808) 586-2377

Statement of
CHRIS J. SADAYASU
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

Thursday, March 30, 2023
3:00 PM
State Capitol, Conference Room #308

In consideration of
BILL NO SB795 SD2 HD1
RELATING TO TAXES.

Chair Yamashita, Vice Chair Kitagawa, and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) supports SB 795, SD2 HD1 that requires productions to provide evidence of reasonable efforts to comply with all applicable requirements to qualify for the motion picture, digital media, and film production income tax credit and provides filers the opportunity to cure and remedy required aspects of Act 217, SLH 2022, HRS 235-17, Section 1 (d) of the Hawai'i Motion Picture, Digital Media and Film Production Income Tax Credit program.

This measure addresses the withholding and related aspects which went into effect January 1, 2023, requiring all filers to pay monthly the required general excise tax withholding for loan-out and payroll companies during the production timeframe. DBEDT conducted briefings with industry and DoTAX to address multiple questions for this requirement, including a demonstration of the new online system for reporting. The opportunity to cure provides industry the ability to ensure compliance of the loan-out companies and inserts language which further clarifies the ability to cure within the 90-day time period as prescribed in the law.

The motion picture, digital media, and film production income tax credit program is a critical tool for developing Hawai'i's film industry and since its inception in 2006, the incentive has grown from \$100M-a-year industry to a \$400M+ year economic driver, and with it, more than 4,000 direct and induced jobs annually.

A thriving film and digital media industry has broadened Hawai'i's tax base, helped to strengthen the state's economy, created high-paying jobs in the creative sector, and made Hawai'i a production center of the Pacific.

Thank you for the opportunity to testify.

Testimony of Walea Constantinou,
Film Commissioner, Honolulu Film Office
City and County of Honolulu

COMMITTEE ON FINANCE

Thursday, March 30, 2023
3:00 p.m.

State Capitol, via Videoconference and Conference Room 308

**RE: SB 795 SD2
RELATING TO TAXES**

Dear Chair Yamashita, Vice-chair Kitagawa, and members of the committees:

The Honolulu Film Office **supports SB 795 SD2** which seeks to provide a mechanism to cure any of the requirements in the subsection, should an error be made. The allowance to cure would make this credit consistent with other measures in the State.

The credit is the complex 'engine' that drives production to our shores. Approving the measure will strengthen the business certainty of the credit and resolve the inconsistency across other state tax credit measures.

Thank you for your kind attention and the opportunity to provide these comments.



MPA

Memo in Support of Senate Bill 795

House Committee on Finance

The Motion Picture Association (“MPA”) and its member companies support Senate Bill 795, H.D. 1, legislation regarding the film and television production tax credit program to clarify the production and taxpayer’s obligations and responsibilities under the program. MPA’s members* are the leading producers and distributors of filmed entertainment across all platforms, including motion picture theaters, cable, satellite, broadcast and internet exhibition.

In 2022, Hawaii enacted amendments to the Motion Picture, Digital Media and Film Production Tax Credit program, Act 217, SLH 2022, HRS 235-17. Among other provisions, the amendments imposed new requirements regarding the employer’s responsibility to withhold and remit in accordance with the General Excise Tax (“GET”) for loan-out corporations. The employer, or payroll services company on behalf of the employer, cannot remit amounts withheld to the Department of Taxation (“DoTAX”) without a GET identification number provided by the loan-out corporation. The language of the 2022 amendments requires that the employer “be compliant” with all requirements. However, if the loan-out corporation does not provide the employer, or payroll services company, with a GET identification number, the employer could be determined to be out of compliance with this requirement, potentially putting the tax credit at risk.

This bill amends the 2022 law to allow the employer to make reasonable efforts to comply with all the requirements of the Tax Code, including the film and television production tax credit program, and to have an opportunity to rectify any compliance issues, should they arise. This will allow employers, and payroll services companies, to work with the loan-out corporations to encourage them to

* MPA member companies include: The Walt Disney Studios Motion Pictures; Netflix Studios, LLC; Paramount Pictures Corporation; Sony Pictures Entertainment Inc.; Universal City Studios LLC; and Warner Bros. Entertainment Inc.

obtain a GET identification number. And the bill will ensure that productions will not be at risk to be found not compliant over a minor technical issue.

When this bill was considered by the Senate Ways and Means Committee, it was amended, at the request of DoTAX, to clarify that the requirements set forth in the tax credit program, such as the timeframe for submitting final audit information, are not deemed waived by the opportunity to cure provision. MPA and DoTAX further agreed to specifically mention the GET section of the law, chapter 237, as a provision for which the opportunity to cure should be recognized.

For these reasons, MPA supports SB 795 and urges the Members of the Committee to support the bill.

March 2023

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Motion Picture, Digital Media, and Film Production Income Tax Credit; Opportunity to Cure Deficiencies

BILL NUMBER: SB 795 HD 1

INTRODUCED BY: House Committee on Economic Development

EXECUTIVE SUMMARY: Requires productions to provide evidence of reasonable efforts to comply with all applicable requirements to qualify for the motion picture, digital media, and film production income tax credit. Requires taxpayers be given notice of and an opportunity to cure requirements for the motion picture, digital media, and film production income tax credit within thirty days of receiving the notice.

SYNOPSIS: Amends section 235-17(d), HRS, to change the requirement that a qualified production “Be compliant with all applicable requirements under title 14, including tax return filing and payments” to “Provide evidence of reasonable efforts to comply” with those requirements.

Adds a proviso that a taxpayer shall be given notice and an opportunity to cure any of the requirements in section 235-17(d), within 30 days of receipt of the notice; provided further that nothing in subsection (d) shall be interpreted as waiving any act required by section 235-17.

EFFECTIVE DATE: January 6, 2050.

STAFF COMMENTS: The legislature by Act 107, SLH 1997, enacted an income tax credit of 4% for costs incurred as a result of producing a motion picture or television film in the state and 7.25% for transient accommodations rented in connection with such activity. The credit was adopted largely to address the impost of the state’s general excise tax on goods and services used by film producers.

The legislature by Act 88, SLH 2006, increased the 4% credit to 15% in a county with a population over 700,000 and to 20% in a county with a population of 700,000 or less. Act 88 also repealed the income tax credit for transient accommodations and expanded the credit to include commercials and digital media productions, and limited the credit to \$8 million per qualified production. Act 89, SLH 2013, increased the motion picture, digital media, and film production tax credit from 15% to 20% for the costs incurred in a county with a population over 700,000 and from 20% to 25% for costs incurred in a county with a population of 700,000 or less. Act 89 also increased the total tax credits that may be claimed per qualified production from \$8 million to \$15 million. Act 143, SLH 2017, imposed a statewide cap on such credits of \$35 million; Act 275, SLH 2019, increased the statewide cap to \$50 million.

Act 217, SLH 2022, increased the credit percentage for Oahu production costs from 20% to 22% and Neighbor Island production costs from 25% to 27%, but it also inserted two additional

requirements in subsection (d), namely that a production “Be compliant with all applicable requirements under title 14, including tax return filing and payments; and ... Provide complete responses to the department of taxation’s inquiries and document requests, in the form prescribed by the department, no later than ninety days from the inquiry or request.”

At the time the 2022 amendment was passed, we were concerned that these new requirements could be used to disqualify a production from all credits for relatively minor issues such as a single late return or failure to respond to a Department inquiry made informally or by mail to an address that was no longer effective.

We view the amendments by this bill as a way to restore some sanity to the administration of this credit.

Digested: 3/28/2023



House of Representatives
The Thirty-Second Legislature
Regular Session of 2023

COMMITTEE ON FINANCE
Rep. Kyle Yamashita, Chair
Senator Lisa Kitagawa, Vice Chair

RE: SB 795, SD2, HD1 RELATING TO TAXES

Date: Thursday, March 30, 2023
Time: 3:00 p.m.
Conference Room 308 Via Videoconference
State Capitol
415 South Beretania Street

March 29, 2023

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

Aloha Chair Yamashita, Vice Chair Kitagawa, 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 Goodsill 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 variety of commercial productions.

We SUPPORT SB 795, SD2, HD1, which allows the production claiming the tax credit to provide evidence of reasonable efforts to comply with all applicable requirements under title 14, as opposed to the current language which could be used to unfairly penalize productions that do not strictly comply with the requirements despite their good faith efforts to do so.

We SUPPORT the intent of the proposed language providing for notice and an opportunity to cure any of the requirements for claiming the tax credit. We respectfully request, however, that the term “taxpayer” be replaced with “production” since the statutory section and indeed the film tax credit itself focuses instead on the production and not the taxpayer. As such, we propose that the language in SB 795 SD2, HD1, page 2, lines 14 and 15, be revised to read as follows:

“; provided that a **production** shall be given notice of and an opportunity to cure...”
(emphasis added.)

Me ke aloha,

Handwritten signatures of Roy Tjioe and Ricardo Galindez in black ink.

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