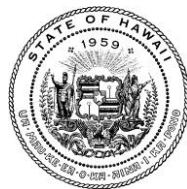


JOSH GREEN M.D.  
GOVERNOR

SYLVIA LUKE  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**

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GARY S. SUGANUMA  
DIRECTOR

KRISTEN M.R. SAKAMOTO  
DEPUTY DIRECTOR

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

**TESTIMONY ON THE FOLLOWING MEASURE:**

H.B. No. 2005, H.D. 1, Relating to Taxes.

**BEFORE THE:**

House Committee on Finance

**DATE:** Thursday, February 22, 2024

**TIME:** 10:00 a.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 H.B. 2005, H.D. 1, for your consideration.

H.B. 2005, H.D. 1, amends section 235-17(d), Hawaii Revised Statutes (HRS), which governs the motion picture, digital media, and film production income tax credit ("film credit"). The measure removes the requirement that taxpayers be compliant with all applicable requirements under title 14, HRS, including tax return filing and payments, and instead requires that taxpayers provide evidence of "reasonable efforts" to comply with those requirements. The measure would also require the Department to give notice to taxpayers and an opportunity to cure any failure to meet any requirements set forth by subsection (d). As amended by H.B. 2005, H.D. 1, subsection 235-17(d), HRS, would require that a production:

- (1) Meet the definition of a qualified production specified in subsection (o);
- (2) Have qualified production costs totaling at least \$100,000;
- (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;
- (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;
- (7) Provide evidence of reasonable efforts to comply with all applicable requirements under title 14, including tax return filing and payments; and
- (8) 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.
- (9) Allow the taxpayer to be given notice of and an opportunity to cure their failure to meet the above-stated requirements.

H.B. 2005, H.D. 1, has a defective effective date of July 1, 3000.

The Department appreciates the added language clarifying that the new language requiring evidence of a reasonable effort to comply with applicable sections of title 14, HRS, does not waive any of the film credit's applicable criteria.

The Department notes that if this Committee wishes to insert a functional effective date and advance this measure, the Department would be able to administer H.B. 2005, H.D. 1, if made effective upon approval and applicable to tax years beginning after December 31, 2023.

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

SYLVIA LUKE  
LT. GOVERNOR

JAMES KUNANE TOKIOKA  
DIRECTOR

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Statement of  
**JAMES KUNANE TOKIOKA**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE ON FINANCE**

Thursday, February 22, 2024  
10:00 AM  
State Capitol, Conference Room #308

In consideration of  
**HD2005 HD1**  
**RELATING TO TAXES.**

Chair Yamashita, Vice Chair Kitagawa and members of the Committee. The Department of Business, Economic Development and Tourism (DBEDT) supports HB2005 which seeks to amend HRS 235-17 Section (d)(7) to require productions to provide evidence of reasonable efforts to comply with all applicable requirements under title 14, and amends (d)(8) to include notice from the department of taxation to the taxpayer to cure any failure to meet requirements of this subsection."

These amendments provide additional conditions which allow filers to cure issues related to requirements and articulate reasonable efforts to remediate any concerns by the Department of Taxation (DoTAX) related to the Motion Picture, Digital Media and Film Production Income Tax Credit.

Thank you for the opportunity to testify.

# TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

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

BILL NUMBER: HB 2005 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 any failure to meet the requirements for the tax credit.

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); albeit with no intention to waive any such requirements to claim credits.

EFFECTIVE DATE: July 1, 3000; applicable to taxable years beginning after December 31, 2023.

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: 2/20/2024



# MOTION PICTURE ASSOCIATION

## Memo in Support of House Bill 2005

### Senate Committee on Finance

The Motion Picture Association (“MPA”) and its member companies support House Bill 2005, legislation that would clarify production and taxpayer obligations and responsibilities under Hawaii’s film and television production tax credit 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 film and television 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 deemed 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 film and television production tax credit program, and to have an opportunity to rectify any compliance issues, should they arise. This important change would allow employers, and payroll services companies, to work with the loan-out corporations to encourage them to obtain a GET identification number. And these amendments would ensure that productions will not be at risk to be deemed non-compliant over a minor technical issue.

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\* 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.

We note the amendment to this bill at the request of DoTAX ensures that the opportunity to cure does not waive any requirements and we have no objections to the amendment.

For these reasons, MPA supports HB 2005 and urges the Members of the Committee to support the bill.