

JAN 25 2023

A BILL FOR AN ACT

RELATING TO THE MOTION PICTURE, DIGITAL MEDIA, AND FILM
PRODUCTION INCOME TAX CREDIT.

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

1 SECTION 1. The legislature finds that the State has been
2 building its film industry for decades. Hawaii is an attractive
3 film destination due to desired scenic landscapes, deep cultural
4 ties, and the feeling of aloha experienced by all members of a
5 production cast and crew. However, Hawaii is also an expensive
6 place to produce film and television, which is largely due to
7 the State's isolated geographic location. Additionally, many
8 other jurisdictions are becoming more friendly and fiscally
9 enticing for motion picture, digital media, and film production
10 decision makers.

11 The legislature further finds that the motion picture,
12 digital media, and film production income tax credit was
13 established by Act 107, Session Laws of Hawaii 1997, to promote
14 the Hawaii film industry and make the State more attractive for
15 motion picture, digital media, and film production decision
16 makers. Initially, the income tax credit was limited to four



1 per cent of production costs and six per cent of transient
2 accommodation expenditures incurred in the State, and there was
3 no cap on the amount. However, the tax credit's existing
4 \$50,000,000 annual spending cap is not reflective of the current
5 volume of business of the State's film industry and does not
6 provide enough room for growth. Film production in the State
7 presently generates roughly \$90,000,000 in credit claims, which
8 creates approximately \$500,000,000 in revenue for the State's
9 economy and an estimated five thousand jobs. These credit
10 claims that exceed the \$50,000,000 cap are spread over multiple
11 years to comply with the cap amount. This rolling cap means
12 that once claims reach \$50,000,00, filers can apply the claim to
13 subsequent years to secure their credit claim. Currently,
14 claims have reached the \$50,000,000 cap for 2022 and 2023 and
15 are well into depleting 2024 funding, with approximately only
16 \$30,000,000 left to allocate.

17 The legislature further finds that with the growth of the
18 motion picture, digital media, and film industry, including the
19 creation and addition of streaming platforms, the State's film
20 industry would benefit from increasing the tax credit's cap
21 while also expanding the definition of qualified productions to



1 include streaming episodes and features. Expanding Hawaii's
2 film industry will diversify the economy and increase
3 opportunities for residents by increasing revenues to the State
4 and creating quality, high-paying jobs.

5 Accordingly, the purpose of this Act is to:

6 (1) Clarify requirements for film productions with
7 production expenditures of \$1,000,000 or more claiming
8 the motion picture, digital media, and film production
9 income tax credit;

10 (2) Increase the annual cap from \$50,000,000 to
11 \$75,000,000 for the total amount of the motion
12 picture, digital media, and film production tax
13 credit; and

14 (3) Expand the definition of qualified production for the
15 motion picture, digital media, and film production
16 income tax credit to include streaming platforms.

17 SECTION 2. Section 235-17, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (h) to read:

20 "(h) Every taxpayer claiming a tax credit under this
21 section for a qualified production that has production



1 expenditures of \$1,000,000 or more shall, no later than ninety
2 days following the end of each taxable year in which qualified
3 production costs were expended, submit a written, sworn
4 statement to the department of business, economic development,
5 and tourism [~~that identifies~~], together with an independent
6 third party certification performed by a qualified certified
7 public accountant, that verifies certain representations made
8 for the purposes of claiming the credit under this chapter,
9 using procedures prescribed by the department of business,
10 economic development, and tourism, and the department of
11 taxation, that includes:

- 12 (1) All qualified production costs as provided by
13 subsection (a), if any, incurred in the previous
14 taxable year;
- 15 (2) The amount of tax credits claimed pursuant to this
16 section, if any, in the previous taxable year; and
- 17 (3) The number of total hires versus the number of local
18 hires by category and by county.

19 This information may be reported from the department of
20 business, economic development, and tourism to the legislature
21 pursuant to subsection (i)(4)."



1 2. By amending subsections (n) and (o) to read:

2 "(n) The total amount of tax credits allowed under this
3 section in any particular year shall be [~~\$50,000,000,~~
4 \$75,000,000; however, if the total amount of credits applied for
5 in any particular year exceeds the aggregate amount of credits
6 allowed for that year under this section, the excess shall be
7 treated as having been applied for in the subsequent year and
8 shall be claimed in the subsequent year; provided that no excess
9 shall be allowed to be claimed after December 31, 2032.

10 (o) 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 Internet-
19 only distribution.

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



1 content, specifically using digital means, including but not
2 limited to digital cameras, digital sound equipment, and
3 computers, to be delivered via film, videotape, interactive game
4 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-



1 length motion picture, short film, made-for-television
2 movie, commercial, music video, interactive game,
3 television (inclusive of broadcast and streaming
4 platforms) series pilot, single season (up to twenty-
5 two episodes~~)~~ for broadcast television and up to ten
6 episodes for an ongoing series for streaming
7 platforms) of a [~~television~~] series [~~regularly~~] filmed
8 in the State [~~if~~]. If the number of episodes per
9 single season for a broadcast television series
10 exceeds twenty-two, or if a single season for a
11 streaming series exceeds ten episodes, additional
12 episodes for the same season shall constitute a
13 separate qualified production~~)~~. A "qualified
14 production" also includes a television or streaming
15 platform special, single [~~television~~] episode that is
16 not part of a television or streaming platform series
17 regularly filmed or based in the State, national
18 magazine show, [e] and national talk show. For the
19 purposes of subsections (d) and (l), each of the
20 aforementioned qualified production categories shall



1 constitute separate, individual qualified productions;

2 and

3 (2) Does not include:

4 (A) News;

5 (B) Public affairs programs;

6 (C) Non-national magazine or talk shows;

7 (D) Televised sporting events or activities;

8 (E) Productions that solicit funds;

9 (F) Productions produced primarily for industrial,
10 corporate, institutional, or other private
11 purposes; and

12 (G) Productions that include any material or
13 performance prohibited by chapter 712.

14 "Qualified production costs" means the costs incurred by a
15 qualified production within the State that are subject to the
16 general excise tax under chapter 237 at the highest rate of tax
17 or income tax under this chapter if the costs are not subject to
18 general excise tax and that have not been financed by any
19 investments for which a credit was or will be claimed pursuant
20 to section 235-110.9. Qualified production costs include but
21 are not limited to:



- 1 (1) Costs incurred during preproduction such as location
2 scouting and related services;
- 3 (2) Costs of set construction and operations, purchases or
4 rentals of wardrobe, props, accessories, food, office
5 supplies, transportation, equipment, and related
6 services;
- 7 (3) Wages or salaries of cast, crew, and musicians;
- 8 (4) Costs of photography, sound synchronization, lighting,
9 and related services;
- 10 (5) Costs of editing, visual effects, music, other post-
11 production, and related services;
- 12 (6) Rentals and fees for use of local facilities and
13 locations, including rentals and fees for use of state
14 and county facilities and locations that are not
15 subject to general excise tax under chapter 237 or
16 income tax under this chapter;
- 17 (7) Rentals of vehicles and lodging for cast and crew;
- 18 (8) Airfare for flights to or from Hawaii, and interisland
19 flights;
- 20 (9) Insurance and bonding;



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

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

6 provided that any government-imposed fines, penalties, or
7 interest that are incurred by a qualified production within the
8 State shall not be "qualified production costs". "Qualified
9 production costs" does not include any costs funded by any
10 grant, forgivable loan, or other amounts not included in gross
11 income for purposes of this chapter."

12 SECTION 3. Section 6 of Act 143, Session Laws of Hawaii
13 2017, is repealed.

14 [~~SECTION 6. No later than January 1, 2018, and each~~
15 ~~January 1 thereafter, each film production that has production~~
16 ~~expenditures of \$1,000,000 or more and is claiming a tax credit~~
17 ~~pursuant to section 235-17, Hawaii Revised Statutes, shall~~
18 ~~obtain an independent third party certification of qualified~~
19 ~~production costs eligible for the motion picture, digital media,~~
20 ~~and film production income tax credit in the form of a tax~~
21 ~~opinion, as required under section 235-17(h), Hawaii Revised~~



S.B. NO. 1495

1 ~~Statutes, submitted to the department of business, economic~~
2 ~~development, and tourism."]~~

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

5 SECTION 5. This Act, upon its approval, shall apply to
6 taxable years beginning after December 31, 2023.

7

INTRODUCED BY:

Lyn A. White



S.B. NO. 1495

Report Title:

Motion Picture, Digital Media, and Film Production Income Tax Credit

Description:

Clarifies requirements for film productions with production expenditures of \$1,000,000 or more claiming the motion picture, digital media, and film production income tax credit. Increases the annual cap from \$50,000,000 to \$75,000,000 for the total amount of the motion picture, digital media, and film production tax credit. Expands the definition of qualified production for the motion picture, digital media, and film production income tax credit to include streaming platforms.

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