

JAN 25 2023

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

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

5 "§235- Media facilities and infrastructure tax credit.

6 (a) In addition to the credits described in section 235-17,
7 beginning on or after July 1, , and ending prior to January
8 1, , there shall be allowed to each taxpayer subject to the
9 taxes imposed by this chapter, a media facilities and
10 infrastructure tax credit that shall be deductible from the
11 taxpayer's net income tax liability, if any, imposed by this
12 chapter for the taxable year in which the credit is properly
13 claimed.

14 The amount of the credit shall be twenty per cent of the
15 qualified media facilities and infrastructure costs incurred in
16 any county of the State.



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1 In the case of a partnership, S corporation, estate, or
2 trust, the tax credit allowable is for qualified costs incurred
3 by the entity for the taxable year. The cost upon which the tax
4 credit is computed shall be determined at the entity level.

5 Distribution and share of credit shall be determined by rule.

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

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

13 (b) The credit allowed under this section shall be claimed
14 against the net income tax liability for the taxable year. For
15 the purposes of this section, "net income tax liability" means
16 net income tax liability reduced by all other credits allowed
17 under this chapter.

18 (c) If the tax credit under this section exceeds the
19 taxpayer's income tax liability, the excess of credits over
20 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.

3 All claims, including any amended claims, for tax credits
4 under this section shall be filed on or before the end of the
5 twelfth month following the close of the taxable year for which
6 the credit may be claimed. Failure to comply with 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);
- 12 (2) Have qualified media facilities and infrastructure
13 costs totaling at least \$ _____ ;
- 14 (3) Provide to the State a qualified Hawaii promotion,
15 which shall be at a minimum, a shared-card, end-title
16 screen credit, where applicable;
- 17 (4) Provide evidence of the hiring of local labor and
18 construction crews;
- 19 (5) Provide evidence that ancillary expenses, such as car
20 rentals, hotel rentals, and food, were used in the



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1 construction of pre-production, shooting period, and
2 post-production facilities located in the State;

3 (6) Provide evidence of financial or in-kind contributions
4 for workforce development efforts in partnership with
5 related local industry labor organizations,
6 educational institutions, or both, toward the
7 furtherance of the local film and digital media
8 industries; and

9 (7) Provide complete responses to the department of
10 taxation's inquiries and document requests, in the
11 form prescribed by the department, no later than
12 ninety days from the inquiry or request.

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

17 (f) The director of taxation:

18 (1) Shall prepare any forms that may be necessary to claim
19 a tax credit under this section;



1 (2) May require the taxpayer to furnish reasonable
2 information to ascertain the validity of the claim for
3 the tax credit made under this section; and

4 (3) May adopt rules under chapter 91 necessary to
5 effectuate the purposes of this section.

6 (g) Every taxpayer claiming a tax credit under this
7 section for a qualified production, no later than ninety days
8 following the end of each taxable year in which qualified
9 production costs were expended, shall submit a written, sworn
10 statement to the department of business, economic development,
11 and tourism that identifies:

12 (1) All qualified media facilities and infrastructure
13 costs as provided by subsection (a), if any, incurred
14 in the previous 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 (h)(4).



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1 (h) The department of business, economic development, and
2 tourism shall:

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

6 (2) Obtain and total the aggregate amounts of all
7 qualified media facilities and infrastructure costs
8 per qualified production and per qualified production
9 per taxable year;

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

15 (4) Submit a report to the legislature no later than
16 twenty days prior to the convening of each regular
17 session detailing the non-aggregated qualified media
18 facilities and infrastructure costs that form the
19 basis of the tax credit claims and expenditures,
20 itemized by taxpayer, in a redacted format to preserve
21 the confidentiality and that shall include the dollar



1 amount claimed, name of company, and name of the
2 qualified production of the taxpayers claiming the
3 credit.

4 (i) Upon each determination required under subsection (h),
5 the department of business, economic development, and tourism
6 shall issue a letter to the taxpayer, regarding the qualified
7 production, specifying the qualified media facilities and
8 infrastructure costs and the tax credit amount qualified for in
9 each taxable year a tax credit is claimed; provided that the
10 department of business, economic development, and tourism shall
11 issue the letter to the taxpayer no later than seven months
12 after receipt of the taxpayer's statement under subsection (g).
13 The taxpayer for each qualified production shall file the letter
14 with the taxpayer's tax return for the qualified production to
15 the department of taxation. Notwithstanding the authority of
16 the department of business, economic development, and tourism
17 under this section, the director of taxation may audit and
18 adjust the tax credit amount to conform to the information filed
19 by the taxpayer.

20 (j) Each taxpayer claiming a tax credit under this section
21 shall submit to the department of business, economic



1 development, and tourism a fee for the media facilities and
2 infrastructure tax credit in an amount equal to 0.2 per cent of
3 the tax credit claimed by the qualified production no later than
4 the deadline stated in subsection (c). The department of
5 business, economic development, and tourism may prescribe the
6 form and method by which this fee is remitted, including through
7 electronic means. The fees collected under this subsection
8 shall be deposited into the Hawaii film and creative industries
9 development special fund under section 201-113.

10 (k) Any taxpayer eligible to claim a qualified media
11 facilities and infrastructure tax credit under subsection (a)
12 shall file with the department of business, economic
13 development, and tourism an annual report no later than March 1
14 following each taxable year for which the credit is claimed.
15 The report shall include the following information:

- 16 (1) The amount of general excise tax paid under
17 chapter 237;
18 (2) The amount of transient accommodations tax paid under
19 chapter 237D;
20 (3) The amount of tax credits claimed under this section;
21 (4) Gross proceeds of each project;



- 1 (5) Number of construction, hotel and car rental services,
2 and ancillary labor contractors employed on each
3 qualified media facilities and infrastructure project;
- 4 (6) Number of independent contractors contracted to work
5 on each qualified media facilities and infrastructure
6 project;
- 7 (7) Amount disbursed as payroll in the State on each
8 qualified media facilities and infrastructure project;
9 and
- 10 (8) List of job classifications with average wage level.
- 11 (1) The department of taxation shall report the data
12 collected under this section along with a cumulative total of
13 tax credits granted for each qualified media facilities and
14 infrastructure project.
- 15 The department of taxation shall submit an annual report to
16 the legislature twenty days prior to each regular session
17 beginning with the 2024 regular session. The report shall
18 contain a cost-benefit analysis of the tax credit established in
19 this section.
- 20 (m) For the purposes of this section:



1 "Production" and "post-production" shall have the same
2 meaning as in section 235-17.

3 "Qualified media facilities and infrastructure costs" means
4 the costs incurred by a qualified production within the State
5 that are subject to the general excise tax under chapter 237 at
6 the highest rate of tax or income tax under this chapter if the
7 costs are not subject to general excise tax and that have not
8 been financed by any investments for which a credit was or will
9 be claimed pursuant to section 235-110.9. Qualified media
10 facilities and infrastructure costs include but are not limited
11 to:

12 (1) Construction labor and construction materials for the
13 construction of pre-production, shooting period, and
14 post-production facilities and infrastructure; and

15 (2) Ancillary expenses, such as car rentals, hotel
16 rentals, and food, used in the construction of
17 pre-production, shooting period, and post-production
18 facilities, such as sound stages and production
19 offices, and infrastructure.

20 "Qualified media facilities and infrastructure project"
21 means the development, construction, renovation, or operation of



1 a film, video, television, or media production or
2 post-production facility and the immovable property and
3 equipment related thereto, or any other pre-production facility
4 that supports and is a necessary component of the media
5 facilities and infrastructure needed for a specific film or
6 media production.

7 "Qualified production":

8 (1) Means a production, with expenditures in the State,
9 for the total or partial production of a
10 feature-length motion picture, short film,
11 made-for-television movie, commercial, music video,
12 interactive game, television series pilot, single
13 season (up to twenty-two episodes) of a television
14 series regularly filmed in the State (if the number of
15 episodes per single season exceeds twenty-two,
16 additional episodes for the same season shall
17 constitute a separate qualified production),
18 television special, single television episode that is
19 not part of a television series regularly filmed or
20 based in the State, national magazine show, or
21 national talk show. For the purposes of



1 subsection (d), each of the aforementioned qualified
2 production categories shall constitute separate,
3 individual qualified productions; and

4 (2) Does not include:

5 (A) News;

6 (B) Public affairs programs;

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

8 (D) Televised sporting events or activities;

9 (E) Productions that solicit funds;

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

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

15 PART II

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

18 1. By amending subsection (a) to read:

19 "(a) Any law to the contrary notwithstanding, there shall
20 be allowed to each taxpayer subject to the taxes imposed by this
21 chapter, an income tax credit that shall be deductible from the



1 taxpayer's net income tax liability, if any, imposed by this
2 chapter for the taxable year in which the credit is properly
3 claimed. The amount of the credit shall be[+] equal to the sum
4 of the following:

5 (1) Either:

6 (A) Twenty-two per cent of the qualified production
7 costs incurred by a qualified production in any
8 county of the State with a population of over
9 seven hundred thousand; or

10 [~~2~~] (B) Twenty-seven per cent of the qualified
11 production costs incurred by a qualified
12 production in any county of the State with a
13 population of seven hundred thousand or less[~~+~~];

14 and

15 (2) An additional three per cent of the qualified
16 production costs incurred by a qualified production;
17 provided that the entire production is produced on
18 locations and qualified production facilities in the
19 State.

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



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

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

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

13 The basis for eligible property for depreciation [~~of~~] or
14 accelerated cost recovery system purposes for state income taxes
15 shall be reduced by the amount of credit allowable and claimed."

16 2. By amending subsection (1) to read:

17 "(1) Total tax credits claimed per qualified production
18 shall not exceed [~~\$17,000,000.~~] \$_____."

19 3. By amending subsections (n) and (o) to read:

20 "(n) The total amount of tax credits allowed under this
21 section in any particular year shall be [~~\$50,000,000.~~]



1 \$ _____; however, if the total amount of credits applied for
2 in any particular year exceeds the aggregate amount of credits
3 allowed for that year under this section, the excess shall be
4 treated as having been applied for in the subsequent year and
5 shall be claimed in the subsequent year; provided that no excess
6 shall be allowed to be claimed after December 31, 2032.

7 (o) For the purposes of this section:

8 "Commercial":

9 (1) Means an advertising message that is filmed using
10 film, videotape, or digital media, for dissemination
11 via television broadcast or theatrical distribution;

12 (2) Includes a series of advertising messages if all parts
13 are produced at the same time over the course of six
14 consecutive weeks; and

15 (3) Does not include an advertising message with
16 Internet-only distribution.

17 "Digital media" means production methods and platforms
18 directly related to the creation of cinematic imagery and
19 content, specifically using digital means, including but not
20 limited to digital cameras, digital sound equipment, and



1 computers, to be delivered via film, videotape, interactive game
2 platform, or other digital distribution media.

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

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

17 "Production facility" means a facility that handles aspects
18 or specialized aspects of production work, including a studio
19 stage, set building mill, or production office, which may be a
20 stand-alone location, a complex of buildings, or located on the
21 site of a film studio.



1 "Qualified production facility" means a production facility
2 engaged in the production of a qualified production; provided
3 that the production facility is:

- 4 (1) Located in the State; and
5 (2) Constructed after December 31, 2022.

6 "Qualified production":

- 7 (1) Means a production, with expenditures in the State,
8 for the total or partial production of a
9 feature-length motion picture, short film,
10 made-for-television movie, commercial, music video,
11 interactive game, television series pilot, single
12 season (up to twenty-two episodes) of a television
13 series regularly filmed in the State (if the number of
14 episodes per single season exceeds twenty-two,
15 additional episodes for the same season shall
16 constitute a separate qualified production),
17 television special, single television episode that is
18 not part of a television series regularly filmed or
19 based in the State, national magazine show, or
20 national talk show. For the purposes of
21 subsections (d) and (l), each of the aforementioned



1 qualified production categories shall constitute
2 separate, individual qualified productions; 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
11 post-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 PART III

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

15 SECTION 4. This Act shall take effect upon its approval
16 and shall:

17 (1) Apply to taxable years beginning after December 31,
18 2022; and



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1 (2) Be repealed on January 1, 2033.

2

INTRODUCED BY: *David Furumaga*



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Report Title:

Media Facilities and Infrastructure Tax Credit; Motion Picture, Digital Media, and Film Production Income Tax Credit

Description:

Establishes an income tax credit for qualified media facilities and infrastructure projects. Requires annual reports to the Legislature. Increases the motion picture, digital media, and film production income tax credit for qualified productions that are entirely produced in the State. Changes the cap amount and aggregate cap amount of the motion picture, digital media, and film production income tax credit to unspecified amounts.

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