

ACT 217

H.B. NO. 1982

A Bill for an Act Relating to Taxes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237- 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 an amount equal to the highest rate of tax under this chapter plus any applicable county surcharge for 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 general excise tax withholding for the benefit of the loan-out company 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 twentieth day of the calendar month immediately following the month in 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 237-1, 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 contract with a third party for the purpose of providing services to the third party.”

SECTION 3. 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~~] Twenty-two 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~~] Twenty-seven 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 any of 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);] (o);
- (2) Have qualified production costs totaling at least [~~\$200,000;~~] \$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) Be compliant 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.

(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 the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may 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~~;~~ that identifies:

- (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 that shall include the dollar amount claimed, name of company, and name of the qualified production of the taxpayers claiming the credit.

(j) Upon each determination required under ~~[this]~~ subsection~~;~~ (i), 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~~;~~: provided that the department of business, economic development, and tourism shall issue the letter to the taxpayer no later than seven months after receipt of the taxpayer's statement under subsection (h). 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.

(k) Each taxpayer claiming a tax credit under this section shall submit to the department of business, economic development, and tourism a fee for the motion picture, digital media, and film production income tax credit in an amount equal to 0.2 per cent of the tax credit claimed by the qualified production no later than the deadline stated in subsection (c). The department of business, economic development, and tourism may prescribe the form and method by which this fee is remitted, including through electronic means. The fees col-

lected under this subsection shall be deposited into the Hawaii film and creative industries development special fund under section 201-113.

~~[(j)]~~ (l) Total tax credits claimed per qualified production shall not exceed ~~[\$15,000,000.]~~ \$17,000,000.

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

~~[(4)]~~ (n) 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)]~~ (o) 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)]~~ (l), 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 at the highest rate of tax or income tax under this chapter if the costs are not subject to general excise tax 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”. “Qualified production costs” does not include any costs funded by any grant, forgivable loan, or other amounts not included in gross income for purposes of this chapter.”

SECTION 4. Act 88, Session Laws of Hawaii 2006, as amended by Act 89, Session Laws of Hawaii 2013, as amended by Act 143, Session Laws of Hawaii 2017, is amended by amending section 4 to read as follows:

- “SECTION 4. This Act shall take effect on July 1, 2006; provided that:
- (1) Section 2 of this Act shall apply to qualified production costs incurred on or after July 1, 2006, and before January 1, [~~2026;~~] 2033; and
 - (2) This Act shall be repealed on January 1, [~~2026;~~] 2033, and section 235-17, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

ACT 217

SECTION 5. The department of taxation may establish two full-time equivalent (2.0 FTE) permanent 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 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$153,334 or so much thereof as may be necessary for fiscal year 2022-2023 to carry out the purposes of this Act, including the payment of salaries of the tax auditor positions authorized pursuant to section 5 of this Act.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 7. The department of business, economic development, and tourism shall establish one full-time equivalent (1.0 FTE) permanent program specialist position to review and certify applications for the motion picture, digital media, and film production income tax credit pursuant to section 235-17, Hawaii Revised Statutes, and other tax credit applications submitted to the department for approval.

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$76,666 or so much thereof as may be necessary for fiscal year 2022-2023 to carry out the purposes of this Act, including the payment of the salary of the program special position established pursuant to section 7 of this Act.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on July 1, 2022; provided that sections 1, 2, 3, and 4 of this Act shall take effect on January 1, 2023.

(Approved June 27, 2022.)

Note

1. Edited pursuant to HRS §23G-16.5.