H.B. NO. 423 H.D. 2 S.D. 2

C.D. 1

## A BILL FOR AN ACT

RELATING TO FILM AND DIGITAL MEDIA INDUSTRY DEVELOPMENT.

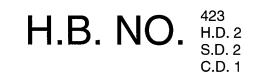
#### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. The legislature finds that the film industry in
Hawaii is an important component of a diversified economy. The
legislature also finds that the motion picture, digital media,
and film production income tax credit has been effective in
stimulating the economy and creating quality jobs in a clean
industry while promoting Hawaii as a visitor destination.

7 The legislature further finds that the film production 8 process can extend over several years due to extensive planning 9 and development in the preproduction stage. The motion picture, 10 digital media, and film production income tax credit's current 11 sunset date of January 1, 2019, will discourage new productions 12 that may be in the development and preproduction phases at that 13 point in time.

14 The legislature also finds that additional amendments to 15 the motion picture, digital media, and film production income 16 tax credit are needed to ensure it continues to benefit the 17 State.

## HB423 CD1 HMS 2017-3827



1	The purpose of this Act is to, among other things:
2	(1) Extend the motion picture, digital media, and film
3	production income tax credit for an additional seven
4	years to provide stability and economic incentive
5	predictability for the film industry, so Hawaii
6	remains competitive and comparable to other
7	jurisdictions in attracting qualified productions,
8	which generates additional revenue, jobs, and tourism
9	marketing exposure; and
10	(2) Amend the qualifications a production must meet in
11	order to claim the credit.
12	SECTION 2. Section 235-17, Hawaii Revised Statutes, is
13	amended to read as follows:
14	"§235-17 Motion picture, digital media, and film
15	production income tax credit. (a) Any law to the contrary
16	notwithstanding, there shall be allowed to each taxpayer subject
17	to the taxes imposed by this chapter, an income tax credit that
18	shall be deductible from the taxpayer's net income tax
19	liability, if any, imposed by this chapter for the taxable year
20	in which the credit is properly claimed. The amount of the
21	credit shall be:

HB423 CD1 HMS 2017-3827

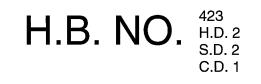
1 (1)Twenty per cent of the qualified production costs 2 incurred by a qualified production in any county of 3 the State with a population of over seven hundred 4 thousand; or 5 Twenty-five per cent of the qualified production costs (2) 6 incurred by a qualified production in any county of 7 the State with a population of seven hundred thousand 8 or less. 9 A qualified production occurring in more than one county may 10 prorate its expenditures based upon the amounts spent in each 11 county, if the population bases differ enough to change the 12 percentage of tax credit. 13 In the case of a partnership, S corporation, estate, or 14 trust, the tax credit allowable is for qualified production 15 costs incurred by the entity for the taxable year. The cost 16 upon which the tax credit is computed shall be determined at the 17 entity level. Distribution and share of credit shall be 18 determined by rule.

19 If a deduction is taken under section 179 (with respect to20 election to expense depreciable business assets) of the Internal

## HB423 CD1 HMS 2017-3827

1 Revenue Code of 1986, as amended, no tax credit shall be allowed 2 for those costs for which the deduction is taken. 3 The basis for eligible property for depreciation of 4 accelerated cost recovery system purposes for state income taxes 5 shall be reduced by the amount of credit allowable and claimed. 6 (b) The credit allowed under this section shall be claimed 7 against the net income tax liability for the taxable year. For 8 the purposes of this section, "net income tax liability" means 9 net income tax liability reduced by all other credits allowed 10 under this chapter. 11  $(\mathbf{C})$ If the tax credit under this section exceeds the 12 taxpayer's income tax liability, the excess of credits over 13 liability shall be refunded to the taxpayer; provided that no 14 refunds or payment on account of the tax credits allowed by this 15 section shall be made for amounts less than \$1. All claims, 16 including any amended claims, for tax credits under this section 17 shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may 18 19 be claimed. Failure to comply with the foregoing provision 20 shall constitute a waiver of the right to claim the credit. 21 (d) To qualify for this tax credit, a production shall:

# HB423 CD1 HMS 2017-3827



1	(1)	Meet the definition of a qualified production
2		specified in subsection $[(1); (m);$
3	(2)	Have qualified production costs totaling at least
4		\$200,000;
5	(3)	Provide the State[ <del>, at</del> ] <u>a qualified Hawaii promotion,</u>
6		which shall be at a minimum, a shared-card, end-title
7		screen credit, where applicable;
8	(4)	Provide evidence of reasonable efforts to hire local
9		talent and crew; [ <del>and</del> ]
10	(5)	Provide evidence when making any claim for products or
11		services acquired or rendered outside of this State
12		that reasonable efforts were unsuccessful to secure
13		and use comparable products or services within this
14		State;
15	[ <del>(5)</del> ]	(6) Provide evidence of financial or in-kind
16		contributions or educational or workforce development
17		efforts, in partnership with related local industry
18		labor organizations, educational institutions, or
19		both, toward the furtherance of the local film and
20		television and digital media industries.

HB423 CD1 HMS 2017-3827

1 (e) On or after July 1, 2006, no qualified production cost 2 that has been financed by investments for which a credit was claimed by any taxpayer pursuant to section 235-110.9 is 3 4 eligible for credits under this section. 5 To receive the tax credit, the taxpayer shall first (f) 6 prequalify the production for the credit by registering with the 7 department of business, economic development, and tourism during 8 the development or preproduction stage. [Failure to comply with 9 this provision may constitute a waiver of the right to claim the 10 credit.]

(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.

17 (h) Every taxpayer claiming a tax credit under this 18 section for a qualified production shall, no later than ninety 19 days following the end of each taxable year in which qualified 20 production costs were expended, submit a written, sworn 21 statement to the department of business, economic development,

HB423 CD1 HMS 2017-3827 

1	and touris	sm, together with a verification review by a qualified
2	certified	public accountant using procedures prescribed by the
3	department	t of business, economic development, and tourism,
4	identifyi	ng:
5	(1)	All qualified production costs as provided by
6		subsection (a), if any, incurred in the previous
7.		taxable year;
8	(2)	The amount of tax credits claimed pursuant to this
9		section, if any, in the previous taxable year; and
10	(3)	The number of total hires versus the number of local
11		hires by category and by county.
12	This info	rmation may be reported from the department of
13	business,	economic development, and tourism to the legislature
14	in redact	ed form pursuant to subsection (i)(4).
15	(i)	The department of business, economic development, and
16	tourism s	hall:
17	(1)	Maintain records of the names of the taxpayers and
18		qualified productions thereof claiming the tax credits
19		under subsection (a);

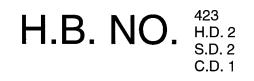


#### H.B. NO. 423 H.D. 2 S.D. 2 C.D. 1

1	(2)	Obtain and total the aggregate amounts of all
2		qualified production costs per qualified production
3		and per qualified production per taxable year;
4	(3)	Provide a letter to the director of taxation
5		specifying the amount of the tax credit per qualified
6		production for each taxable year that a tax credit is
7		claimed and the cumulative amount of the tax credit
8		for all years claimed; and
9	(4)	Submit a report to the legislature no later than
10		twenty days prior to the convening of each regular
11		session detailing the non-aggregated qualified
12		production costs that form the basis of the tax credit
13		claims and expenditures, itemized by taxpayer, in a
14		redacted format to preserve the confidentiality of the
15		taxpayers claiming the credit.
16	Upon	each determination required under this subsection, the
17	departmen	t of business, economic development, and tourism shall
18	issue a l	etter to the taxpayer, regarding the qualified
19	productio	n, specifying the qualified production costs and the
20	tax credi	t amount qualified for in each taxable year a tax

21 credit is claimed. The taxpayer for each qualified production

HB423 CD1 HMS 2017-3827 



.

1	shall file the letter with the taxpayer's tax return for the
2	qualified production to the department of taxation.
3	Notwithstanding the authority of the department of business,
4	economic development, and tourism under this section, the
5	director of taxation may audit and adjust the tax credit amount
6	to conform to the information filed by the taxpayer.
7	(j) Total tax credits claimed per qualified production
8	shall not exceed \$15,000,000.
9	(k) Qualified productions shall comply with subsections
10	(d), (e), (f), and (h).
11	(1) The total amount of tax credits allowed under this
12	section in any particular year shall be \$35,000,000; however, if
13	the total amount of credits applied for in any particular year
14	exceeds the aggregate amount of credits allowed for such year
15	under this section, the excess shall be treated as having been
16	applied for in the subsequent year and shall be claimed in such
17	year; provided that no excess shall be allowed to be claimed
18	after December 31, 2025.
19	[/])] (m) Bon the numbers of this continu
	$\left[\frac{(1)}{(m)}\right]$ (m) For the purposes of this section:



#### H.B. NO. 423 H.D. 2 S.D. 2 C.D. 1

1	(1)	Means an advertising message that is filmed using
2		film, videotape, or digital media, for dissemination
3		via television broadcast or theatrical distribution;
4	(2)	Includes a series of advertising messages if all parts
5		are produced at the same time over the course of six
6		consecutive weeks; and
7	(3)	Does not include an advertising message with
8		Internet-only distribution.
9	"Dig	ital media" means production methods and platforms
10	directly	related to the creation of cinematic imagery and
11	content,	specifically using digital means, including but not
12	limited t	o digital cameras, digital sound equipment, and
13	computers	, to be delivered via film, videotape, interactive game
14	platform,	or other digital distribution media.
15	"Pos	t-production" means production activities and services
16	conducted	after principal photography is completed, including
17	but not l	imited to editing, film and video transfers,
18	duplicati	on, transcoding, dubbing, subtitling, credits, closed
19	captionin	ng, audio production, special effects (visual and

20 sound), graphics, and animation.

# HB423 CD1 HMS 2017-3827

~

#### H.B. NO. 423 H.D. 2 S.D. 2 C.D. 1

1	"Proc	duction" means a series of activities that are directly
2	related to	o the creation of visual and cinematic imagery to be
3	delivered	via film, videotape, or digital media and to be sold,
4	distribute	ed, or displayed as entertainment or the advertisement
5	of product	ts for mass public consumption, including but not
6	limited to	o scripting, casting, set design and construction,
7	transporta	ation, videography, photography, sound recording,
8	interactiv	ve game design, and post-production.
9	"Qua	lified production":
10	(1)	Means a production, with expenditures in the State,
11		for the total or partial production of a feature-
12		length motion picture, short film, made-for-television
13		movie, commercial, music video, interactive game,
14		television series pilot, single season (up to
15		twenty-two episodes) of a television series regularly
16		filmed in the State (if the number of episodes per
17		single season exceeds twenty-two, additional episodes
18		for the same season shall constitute a separate
19		qualified production), television special, single
20		television episode that is not part of a television
21		series regularly filmed or based in the State,

HB423 CD1 HMS 2017-3827

1		natio	onal magazine show, or national talk show. For
2		the p	ourposes of subsections (d) and (j), each of the
3		afore	ementioned qualified production categories shall
4		const	itute separate, individual qualified productions;
5		and	
6	(2)	Does	not include:
7		(A)	News;
8		(B)	Public affairs programs;
9		(C)	Non-national magazine or talk shows;
10		(D)	Televised sporting events or activities;
11		(E)	Productions that solicit funds;
12		(F)	Productions produced primarily for industrial,
13			corporate, institutional, or other private
14			purposes; and
15		(G)	Productions that include any material or
16			performance prohibited by chapter 712.
17	"Qua	lified	d production costs" means the costs incurred by a
18	qualified	produ	action within the State that are subject to the
19	general e	xcise	tax under chapter 237 or income tax under this
20	chapter a	nd tha	at have not been financed by any investments for
21	which a c	redit	was or will be claimed pursuant to section





1	235-110.9	. Qualified production costs include but are not
2	limited to	<b>D</b> :
3	(1)	Costs incurred during preproduction such as location
4		scouting and related services;
5	(2)	Costs of set construction and operations, purchases or
6		rentals of wardrobe, props, accessories, food, office
7		supplies, transportation, equipment, and related
8		services;
9	(3)	Wages or salaries of cast, crew, and musicians;
10	(4)	Costs of photography, sound synchronization, lighting,
11		and related services;
12	(5)	Costs of editing, visual effects, music, other post-
13		production, and related services;
14	(6)	Rentals and fees for use of local facilities and
15		locations, including rentals and fees for use of state
16		and county facilities and locations that are not
17		subject to general excise tax under chapter 237 or
18		income tax under this chapter;
19	(7)	Rentals of vehicles and lodging for cast and crew;
20	(8)	Airfare for flights to or from Hawaii, and interisland
21		flights;



Page 14



1	(9)	Insurance and bonding;
2	(10)	Shipping of equipment and supplies to or from Hawaii,
3	`	and interisland shipments; and
4	(11)	Other direct production costs specified by the
5		department in consultation with the department of
6		business, economic development, and tourism;
7	provided	that any government-imposed fines, penalties, or
8	interest	that are incurred by a qualified production within the
9	State sha	ll not be "qualified production costs"."
10	SECT	ION 3. Act 88, Session Laws of Hawaii 2006, as amended
11	by Act 89	, Session Laws of Hawaii 2013, is amended by amending
12	section 4	to read as follows:
13	"SEC	TION 4. This Act shall take effect on July 1, 2006;
14	provided	that:
15	(1)	Section 2 of this Act shall apply to qualified
16		production costs incurred on or after July 1, 2006,
17		and before January 1, [ <del>2019;</del> ] <u>2026;</u> and
18	(2)	This Act shall be repealed on January 1, [ <del>2019,</del> ] <u>2026,</u>
19		and section 235-17, Hawaii Revised Statutes, shall be
20		reenacted in the form in which it read on the day
21		before the effective date of this Act."





1	SECTION 4. No rule shall be adopted pursuant to
2	chapter 91, Hawaii Revised Statutes, to expand the scope of
3	section 235-17, Hawaii Revised Statutes, if the rule conflicts
4	with the legislative intent of that section.
5	SECTION 5. The department of business, economic
6	development, and tourism shall submit an annual report on the
7	activities and expenditures of the motion picture, digital
8	media, and film production income tax credit to the legislature
9	no later than twenty days prior to each regular session until
10	the tax credit expires.
11	SECTION 6. No later than January 1, 2018, and each
11 12	SECTION 6. No later than January 1, 2018, and each January 1 thereafter, each film production that has production
12	January 1 thereafter, each film production that has production
12 13	January 1 thereafter, each film production that has production expenditures of \$1,000,000 or more and is claiming a tax credit
12 13 14	January 1 thereafter, each film production that has production expenditures of \$1,000,000 or more and is claiming a tax credit pursuant to section 235-17, Hawaii Revised Statutes, shall
12 13 14 15	January 1 thereafter, each film production that has production expenditures of \$1,000,000 or more and is claiming a tax credit pursuant to section 235-17, Hawaii Revised Statutes, shall obtain an independent third party certification of qualified
12 13 14 15 16	January 1 thereafter, each film production that has production expenditures of \$1,000,000 or more and is claiming a tax credit pursuant to section 235-17, Hawaii Revised Statutes, shall obtain an independent third party certification of qualified production costs eligible for the motion picture, digital media,
12 13 14 15 16 17	January 1 thereafter, each film production that has production expenditures of \$1,000,000 or more and is claiming a tax credit pursuant to section 235-17, Hawaii Revised Statutes, shall obtain an independent third party certification of qualified production costs eligible for the motion picture, digital media, and film production income tax credit in the form of a tax





SECTION 7. Beginning January 1, 2018, the department of 1 2 business, economic development, and tourism, in collaboration with the department of taxation, shall submit to the governor 3 4 and the legislature an annual report on the number of jobs 5 created in the State by, and the fiscal impact to the State of, 6 those film productions receiving the motion picture, digital 7 media, and film production income tax credit in the State. 8 SECTION 8. Statutory material to be repealed is bracketed 9 and stricken. New statutory material is underscored. 10 SECTION 9. This Act shall take effect on December 31, 11 2018; provided that section 2 shall apply to taxable years beginning after December 31, 2018. 12





**Report Title:** Film; Digital Media Industry; Tax Credit

#### Description:

Amends the qualifications a production must meet in order to claim the credit. Caps the annual amount of tax credits that may be claimed at \$35,000,000. Extends the sunset date to January 1, 2026. Requires DBEDT to submit an annual report to the Legislature regarding the activities and expenditures of the tax credit. Clarifies that no rule shall be adopted to expand the scope of the tax credit where the rule conflicts with legislative intent. Requires certain film productions claiming the tax credit to hire an independent third party certification of qualified production costs eligible for the credit. Requires DBEDT, in collaboration with DOTAX, to submit to the Governor and the Legislature a report on the number of jobs created in the State and the fiscal impact of every film production receiving the tax credit in the State. (HB423 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

