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## A BILL FOR AN ACT

RELATING TO FILM CREDIT CAP REMOVAL.

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

1           SECTION 1. The legislature finds that the film industry in  
2 Hawaii is vital to maintaining a diversified economy. The motion  
3 picture, digital media, and film production income tax credit  
4 has been effective in stimulating the economy, creating quality  
5 jobs, encouraging students to stay in state, and promoting  
6 Hawaii as a visitor destination. Presently, the State is losing  
7 important projects to other states that have a higher credit  
8 cap, or no cap at all, and other countries that offer more  
9 appealing incentives. There are many missed opportunities for  
10 Hawaii when productions locate elsewhere. For instance, the  
11 production for Dwayne Johnson's new comedy series, inspired by  
12 his life, will occur in Australia instead of Hawaii.

13           The legislature further finds that the benefits to the  
14 State are important enough to warrant a removal of the annual  
15 cap on the tax credit to make Hawaii a more competitive locale  
16 for the film industry and bring tourism into the state.



1           The purpose of this Act is to remove the annual cap on the  
2 motion picture, digital media, and film production income tax  
3 credit.

4           SECTION 2. Section 235-17, Hawaii Revised Statutes, is  
5 amended to read as follows:

6       "**§235-17 Motion picture, digital media, and film production**  
7 **income tax credit.** *[Repeal and reenactment on January 1, 2026.*

8 *L 2017, c 143, §3.]* (a) Any law to the contrary  
9 notwithstanding, there shall be allowed to each taxpayer subject  
10 to the taxes imposed by this chapter, an income tax credit that  
11 shall be deductible from the taxpayer's net income tax  
12 liability, if any, imposed by this chapter for the taxable year  
13 in which the credit is properly claimed. The amount of the  
14 credit shall be:

15           (1) Twenty per cent of the qualified production costs  
16               incurred by a qualified production in any county of  
17               the State with a population of over seven hundred  
18               thousand; or

19           (2) Twenty-five per cent of the qualified production costs  
20               incurred by a qualified production in any county of



1           the State with a population of seven hundred thousand  
2           or less.

3   A qualified production occurring in more than one county may  
4   prorate its expenditures based upon the amounts spent in each  
5   county, if the population bases differ enough to change the  
6   percentage of tax credit.

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

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

17           The basis for eligible property for depreciation of  
18   accelerated cost recovery system purposes for state income taxes  
19   shall be reduced by the amount of credit allowable and claimed.

20           (b) The credit allowed under this section shall be claimed  
21   against the net income tax liability for the taxable year. For



1 the purposes of this section, "net income tax liability" means  
2 net income tax liability reduced by all other credits allowed  
3 under this chapter.

4 (c) If the tax credit under this section exceeds the  
5 taxpayer's income tax liability, the excess of credits over  
6 liability shall be refunded to the taxpayer; provided that no  
7 refunds or payment on account of the tax credits allowed by this  
8 section shall be made for amounts less than \$1. All claims,  
9 including any amended claims, for tax credits under this section  
10 shall be filed on or before the end of the twelfth month  
11 following the close of the taxable year for which the credit may  
12 be claimed. Failure to comply with the foregoing provision  
13 shall constitute a waiver of the right to claim the credit.

14 (d) To qualify for this tax credit, a production shall:

15 (1) Meet the definition of a qualified production  
16 specified in subsection ~~(m)~~(k);

17 (2) Have qualified production costs totaling at least  
18 \$200,000;

19 (3) Provide the State a qualified Hawaii promotion, which  
20 shall be at a minimum, a shared-card, end-title screen  
21 credit, where applicable;



1 (4) Provide evidence of reasonable efforts to hire local  
2 talent and crew;

3 (5) Provide evidence when making any claim for products or  
4 services acquired or rendered outside of this State  
5 that reasonable efforts were unsuccessful to secure  
6 and use comparable products or services within this  
7 State;

8 (6) Provide evidence of financial or in-kind contributions  
9 or educational or workforce development efforts, in  
10 partnership with related local industry labor  
11 organizations, educational institutions, or both,  
12 toward the furtherance of the local film and  
13 television and digital media industries.

14 (e) On or after July 1, 2006, no qualified production cost  
15 that has been financed by investments for which a credit was  
16 claimed by any taxpayer pursuant to section 235-110.9 is  
17 eligible for credits under this section.

18 (f) To receive the tax credit, the taxpayer shall first  
19 prequalify the production for the credit by registering with the  
20 department of business, economic development, and tourism during  
21 the development or preproduction stage.



1           (g) The director of taxation shall prepare forms as may be  
2 necessary to claim a credit under this section. The director  
3 may also require the taxpayer to furnish information to  
4 ascertain the validity of the claim for credit made under this  
5 section and may adopt rules necessary to effectuate the purposes  
6 of this section pursuant to chapter 91.

7           (h) Every taxpayer claiming a tax credit under this  
8 section for a qualified production shall, no later than ninety  
9 days following the end of each taxable year in which qualified  
10 production costs were expended, submit a written, sworn  
11 statement to the department of business, economic development,  
12 and tourism, together with a verification review by a qualified  
13 certified public accountant using procedures prescribed by the  
14 department of business, economic development, and tourism,  
15 identifying:

16           (1) All qualified production costs as provided by  
17                subsection (a), if any, incurred in the previous  
18                taxable year;

19           (2) The amount of tax credits claimed pursuant to this  
20                section, if any, in the previous taxable year; and



1           (3) The number of total hires versus the number of local  
2           hires by category and by county.

3 This information may be reported from the department of  
4 business, economic development, and tourism to the legislature  
5 in redacted form pursuant to subsection (i)(4).

6           (i) The department of business, economic development, and  
7 tourism shall:

8           (1) Maintain records of the names of the taxpayers and  
9           qualified productions thereof claiming the tax credits  
10          under subsection (a);

11          (2) Obtain and total the aggregate amounts of all  
12          qualified production costs per qualified production  
13          and per qualified production per taxable year;

14          (3) Provide a letter to the director of taxation  
15          specifying the amount of the tax credit per qualified  
16          production for each taxable year that a tax credit is  
17          claimed and the cumulative amount of the tax credit  
18          for all years claimed; and

19          (4) Submit a report to the legislature no later than  
20          twenty days prior to the convening of each regular  
21          session detailing the non-aggregated qualified



1 production costs that form the basis of the tax credit  
2 claims and expenditures, itemized by taxpayer, in a  
3 redacted format to preserve the confidentiality of the  
4 taxpayers claiming the credit.

5 Upon each determination required under this subsection, the  
6 department of business, economic development, and tourism shall  
7 issue a letter to the taxpayer, regarding the qualified  
8 production, specifying the qualified production costs and the  
9 tax credit amount qualified for in each taxable year a tax  
10 credit is claimed. The taxpayer for each qualified production  
11 shall file the letter with the taxpayer's tax return for the  
12 qualified production to the department of taxation.

13 Notwithstanding the authority of the department of business,  
14 economic development, and tourism under this section, the  
15 director of taxation may audit and adjust the tax credit amount  
16 to conform to the information filed by the taxpayer.

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

19 ~~(k)~~ (j) Qualified productions shall comply with subsections  
20 (d), (e), (f), and (h).



1       ~~(l) The total amount of tax credits allowed under this~~  
2 ~~section in any particular year shall be \$50,000,000; however, if~~  
3 ~~the total amount of credits applied for in any particular year~~  
4 ~~exceeds the aggregate amount of credits allowed for such year~~  
5 ~~under this section, the excess shall be treated as having been~~  
6 ~~applied for in the subsequent year and shall be claimed in such~~  
7 ~~year; provided that no excess shall be allowed to be claimed~~  
8 ~~after December 31, 2025.~~

9       ~~(m)~~ (k) For the purposes of this section:

10       "Commercial":

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

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

17       (3) Does not include an advertising message with  
18             Internet-only distribution.

19       "Digital media" means production methods and platforms  
20       directly related to the creation of cinematic imagery and  
21       content, specifically using digital means, including but not



1 limited to digital cameras, digital sound equipment, and  
2 computers, to be delivered via film, videotape, interactive game  
3 platform, or other digital distribution media.

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

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

18 "Qualified production":

19 (1) Means a production, with expenditures in the State,  
20 for the total or partial production of a feature-  
21 length motion picture, short film, made-for-television



1 movie, commercial, music video, interactive game,  
2 television series pilot, single season (up to  
3 twenty-two episodes) of a television series regularly  
4 filmed in the State (if the number of episodes per  
5 single season exceeds twenty-two, additional episodes  
6 for the same season shall constitute a separate  
7 qualified production), television special, single  
8 television episode that is not part of a television  
9 series regularly filmed or based in the State,  
10 national magazine show, or national talk show. For  
11 the purposes of subsections (d) and (j), each of the  
12 aforementioned qualified production categories shall  
13 constitute separate, individual qualified productions;  
14 and

- 15 (2) Does not include:
- 16 (A) News;
  - 17 (B) Public affairs programs;
  - 18 (C) Non-national magazine or talk shows;
  - 19 (D) Televised sporting events or activities;
  - 20 (E) Productions that solicit funds;



1 (F) Productions produced primarily for industrial,  
2 corporate, institutional, or other private  
3 purposes; and

4 (G) Productions that include any material or  
5 performance prohibited by chapter 712.

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

13 (1) Costs incurred during preproduction such as location  
14 scouting and related services;

15 (2) Costs of set construction and operations, purchases or  
16 rentals of wardrobe, props, accessories, food, office  
17 supplies, transportation, equipment, and related  
18 services;

19 (3) Wages or salaries of cast, crew, and musicians;

20 (4) Costs of photography, sound synchronization, lighting,  
21 and related services;



- 1 (5) Costs of editing, visual effects, music, other post-  
2 production, and related services;
- 3 (6) Rentals and fees for use of local facilities and  
4 locations, including rentals and fees for use of state  
5 and county facilities and locations that are not  
6 subject to general excise tax under chapter 237 or  
7 income tax under this chapter;
- 8 (7) Rentals of vehicles and lodging for cast and crew;
- 9 (8) Airfare for flights to or from Hawaii, and interisland  
10 flights;
- 11 (9) Insurance and bonding;
- 12 (10) Shipping of equipment and supplies to or from Hawaii,  
13 and interisland shipments; and
- 14 (11) Other direct production costs specified by the  
15 department in consultation with the department of  
16 business, economic development, and tourism;
- 17 provided that any government-imposed fines, penalties, or  
18 interest that are incurred by a qualified production within the  
19 State shall not be "qualified production costs". "

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



1 SECTION 4. This Act shall take effect upon approval.

2

INTRODUCED BY:



JAN 26 2021



# H.B. NO. 1156

**Report Title:**

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

**Description:**

Removes the cap on the amount that may be claimed per qualified production. Removes the limit for the total amount of tax credits allowed per year for the motion picture, digital media, and film production income tax credit.

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

