

JAN 22 2021

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 235-17, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§235-17 Motion picture, digital media, and film**
4 **production income tax credit.** (a) Any law to the contrary
5 notwithstanding, there shall be allowed to each taxpayer subject
6 to the taxes imposed by this chapter, an income tax credit that
7 shall be deductible from the taxpayer's net income tax
8 liability, if any, imposed by this chapter for the taxable year
9 in which the credit is properly claimed. The amount of the
10 credit shall be:
11 (1) Twenty per cent of the qualified production costs
12 incurred by a qualified production in any county of
13 the State with a population of over seven hundred
14 thousand; or
15 (2) Twenty-five per cent of the qualified production costs
16 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.

9 All claims, including any amended claims, for tax credits
10 under this section shall be filed on or before the end of the
11 twelfth month following the close of the taxable year for which
12 the credit may be claimed. Failure to comply with the foregoing
13 provision shall constitute a waiver of the right to claim the
14 credit.

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

16 (1) Meet the definition of a qualified production
17 specified in subsection [~~(m)~~] (n);

18 (2) Have qualified production costs totaling at least
19 [~~\$200,000~~] \$50,000;



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

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

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

11 ~~+(6)]~~ (5) Provide evidence of financial or in-kind
12 contributions or educational or workforce development
13 efforts, in partnership with related local industry
14 labor organizations, educational institutions, or
15 both, toward the furtherance of the local film and
16 television and digital media industries~~[-]~~;

17 (6) If claiming a credit under this section in an amount
18 in excess of \$5,000,000 in any taxable year, provide
19 evidence that at least seventy-five per cent of the
20 qualified production was filmed in the State; and



1 (7) If claiming credits under this section for a qualified
2 production in an aggregate amount in excess of
3 \$15,000,000 in two taxable years, and claiming above-
4 the-line costs in excess of \$3,000,000 during the same
5 period, enter into an agreement to provide the State
6 with 0.25 per cent of all worldwide gross revenues of
7 the qualified production.

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

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

16 (g) The director of taxation shall prepare forms as may be
17 necessary to claim a credit under this section. The director
18 may also require the taxpayer to furnish information to
19 ascertain the validity of the claim for credit made under this
20 section and may adopt rules necessary to effectuate the purposes
21 of this section pursuant to chapter 91.



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

10 (1) All qualified production costs as provided by
11 subsection (a), if any, incurred in the previous
12 taxable year;

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

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

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

20 (i) The department of business, economic development, and
21 tourism shall:



- 1 (1) Maintain records of the names of the taxpayers and
2 qualified productions thereof claiming the tax credits
3 under subsection (a);
- 4 (2) Obtain and total the aggregate amounts of all
5 qualified production costs per qualified production
6 and per qualified production per taxable year;
- 7 (3) Provide a letter to the director of taxation
8 specifying the amount of the tax credit per qualified
9 production for each taxable year that a tax credit is
10 claimed and the cumulative amount of the tax credit
11 for all years claimed; and
- 12 (4) Submit a report to the legislature no later than
13 twenty days prior to the convening of each regular
14 session detailing the non-aggregated qualified
15 production costs that form the basis of the tax credit
16 claims and expenditures, itemized by taxpayer, in a
17 redacted format to preserve the confidentiality of the
18 taxpayers claiming the credit.

19 Upon each determination required under this subsection, the
20 department of business, economic development, and tourism shall
21 issue a letter to the taxpayer, regarding the qualified



1 production, specifying the qualified production costs and the
2 tax credit amount qualified for in each taxable year a tax
3 credit is claimed. The taxpayer for each qualified production
4 shall file the letter with the taxpayer's tax return for the
5 qualified production to the department of taxation.
6 Notwithstanding the authority of the department of business,
7 economic development, and tourism under this section, the
8 director of taxation may audit and adjust the tax credit amount
9 to conform to the information filed by the taxpayer.

10 (j) Total tax credits claimed per qualified production
11 shall not exceed [~~\$15,000,000.~~] \$12,000,000 per taxable year.

12 (k) Above-the-line costs used to claim a credit for a
13 qualified production under this section shall not exceed
14 \$2,000,000 per taxable year.

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

17 [~~(l)~~] (m) The total amount of tax credits allowed under
18 this section in any particular year shall be [~~\$50,000,000.~~]
19 \$45,000,000; however, if the total amount of credits applied for
20 in any particular year exceeds the aggregate amount of credits
21 allowed for such year under this section, the excess shall be



1 treated as having been applied for in the subsequent year and
2 shall be claimed in such year; provided that no excess shall be
3 allowed to be claimed after December 31, [~~2025-~~] 2032.

4 [~~(m)~~] (n) For the purposes of this section:

5 "Above-the-line costs" means:

6 (1) Development expenditures;

7 (2) Salaries and other compensation of the writers,
8 directors, producers, and lead cast; and

9 (3) Travel costs of the writers, directors, producers, and
10 lead cast,

11 of a qualified production, as each of those terms is defined in
12 subsection, and in each case not determined by how any
13 particular expenditure is categorized within a production's
14 budget.

15 "Commercial":

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

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



1 (3) Does not include an advertising message with
2 Internet-only distribution.

3 "Digital media" means production methods and platforms
4 directly related to the creation of cinematic imagery and
5 content, specifically using digital means, including but not
6 limited to digital cameras, digital sound equipment, and
7 computers, to be delivered via film, videotape, interactive game
8 platform, or other digital distribution media.

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

15 "Production" means a series of activities that are directly
16 related to the creation of visual and cinematic imagery to be
17 delivered via film, videotape, or digital media and to be sold,
18 distributed, or displayed as entertainment or the advertisement
19 of products for mass public consumption, including but not
20 limited to scripting, casting, set design and construction,



1 transportation, videography, photography, sound recording,
2 interactive game design, and post-production.

3 "Qualified production":

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

21 (2) Does not include:



- 1 (A) News;
- 2 (B) Public affairs programs;
- 3 (C) Non-national magazine or talk shows;
- 4 (D) Televised sporting events or activities;
- 5 (E) Productions that solicit funds;
- 6 (F) Productions produced primarily for industrial,
- 7 corporate, institutional, or other private
- 8 purposes; and
- 9 (G) Productions that include any material or
- 10 performance prohibited by chapter 712.

11 "Qualified production costs" means the costs incurred by a
12 qualified production within the State, through transactions with
13 a qualified vendor, that are subject to the general excise tax
14 under chapter 237 or income tax under this chapter and that have
15 not been financed by any investments for which a credit was or
16 will be claimed pursuant to section 235-110.9. Qualified
17 production costs include but are not limited to:

- 18 (1) Costs incurred during preproduction such as location
- 19 scouting and related services;
- 20 (2) Costs of set construction and operations, purchases or
- 21 rentals of wardrobe, props, accessories, food, office



- 1 supplies, transportation, equipment, and related
2 services;
- 3 (3) Wages or salaries of cast, crew, and musicians;
- 4 (4) Costs of photography, sound synchronization, lighting,
5 and related services;
- 6 (5) Costs of editing, visual effects, music, other post-
7 production, and related services;
- 8 (6) Rentals and fees for use of local facilities and
9 locations, including rentals and fees for use of state
10 and county facilities and locations that are not
11 subject to general excise tax under chapter 237 or
12 income tax under this chapter;
- 13 (7) Rentals of vehicles and lodging for cast and crew;
- 14 (8) Airfare for flights to or from Hawaii, and interisland
15 flights;
- 16 (9) Insurance and bonding;
- 17 (10) Shipping of equipment and supplies to or from Hawaii,
18 and interisland shipments; and
- 19 (11) Other direct production costs specified by the
20 department in consultation with the department of
21 business, economic development, and tourism;



1 provided that any government-imposed fines, penalties, or
2 interest that are incurred by a qualified production within the
3 State shall not be "qualified production costs".

4 "Qualified vendor" means an entity doing business in the
5 State that provides goods and services to a qualified
6 production; provided that:

7 (1) The entity has been incorporated or organized in the
8 State for no less than five years; and

9 (2) All principals of the entity are state income
10 taxpayers."

11 SECTION 2. Act 88, Session Laws of Hawaii 2006, as amended
12 by Act 89, Session Laws of Hawaii 2013, as amended by Act 143,
13 Session Laws of Hawaii 2017, is amended by amending section 4 to
14 read as follows:

15 "SECTION 4. This Act shall take effect on July 1, 2006;
16 provided that:

17 (1) Section 2 of this Act shall apply to qualified
18 production costs incurred on or after July 1, 2006,
19 and before January 1, [~~2026~~] 2033; and

20 (2) This Act shall be repealed on January 1, [~~2026~~] 2033,
21 and section 235-17, Hawaii Revised Statutes, shall be



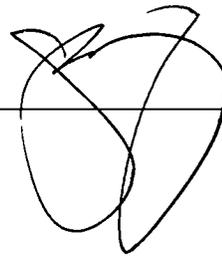
1 reenacted in the form in which it read on the day
2 before the effective date of this Act."

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

5 SECTION 4. This Act shall take effect upon its approval;
6 provided that section 1 shall apply to taxable years beginning
7 after December 31, 2020.

8

INTRODUCED BY: _____

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S.B. NO. 921

Report Title:

Motion picture, digital media, and film production income tax credit

Description:

Amends the motion picture, digital media, and film production income tax credit by: (1) Reducing the cap amount and aggregate cap amount of the credit; (2) Establishing a maximum amount of above-the-line costs that may be used to claim the credit; (3) Reducing the minimum amount of qualified productions costs needed to claim the credit; (4) Requiring qualified production costs to be incurred through a qualified vendor; (5) Requiring at least 75% of a qualified production to be filmed in the State if the taxpayer claims a credit in excess of \$5,000,000 in a single taxable year; and (6) Requiring that the State receive a percentage of the worldwide gross revenues of a qualified production if the taxpayer claims credits in excess of \$15,000,000 in 2 taxable years. Defines "above-the-line costs" and "qualified vendor". Extends the repeal date of the tax credit from 1/1/2026 to 1/1/2033.

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

