
A BILL FOR AN ACT

RELATING TO TAXES.

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

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

4 "§237- Withholding of tax by persons claiming the
5 motion picture, digital media, and film production income tax
6 credit. (a) Every person making payment to a loan-out company
7 and claiming a tax credit pursuant to section 235-17 shall
8 deduct and withhold an amount equal to the applicable rate of
9 all payments made to the loan-out company for services performed
10 in the State. The amounts withheld shall be remitted pursuant
11 to subsection (b). The amounts withheld under this section
12 shall be deemed to be a tax withholding for the benefit of the
13 loan-out company performing the service.

14 (b) Every person subject to subsection (a) shall make a
15 return of the amount withheld and file the return with the
16 department of taxation no later than the month following the
17 date on which the payment was made to the loan-out company. The



1 taxes withheld shall be remitted with the return. The
2 department of taxation shall prescribe the forms and procedures
3 to administer this section, including any application processing
4 fees, as necessary.

5 (c) All taxes withheld pursuant to this section shall be
6 held in trust by the person withholding for the State. If any
7 person required to withhold and remit taxes under this section
8 fails to withhold or remit the taxes, the person shall be liable
9 for the failure as provided in section 235-64."

10 SECTION 2. Section 237-1, Hawaii Revised Statutes, is
11 amended by adding a new definition to be appropriately inserted
12 and to read as follows:

13 "Loan-out company" means a wholly-owned entity formed on
14 behalf of a person that serves as a separate entity that
15 constitutes the person's means of entering a contract with a
16 third party for the purpose of providing services to the third
17 party."

18 SECTION 3. Section 235-17, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§235-17 Motion picture, digital media, and film**
21 **production income tax credit. (a) Any law to the contrary**



1 notwithstanding, there shall be allowed to each taxpayer subject
2 to the taxes imposed by this chapter, an income tax credit that
3 shall be deductible from the taxpayer's net income tax
4 liability, if any, imposed by this chapter for the taxable year
5 in which the credit is properly claimed. The amount of the
6 credit shall be:

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

11 (2) Twenty-five per cent of the qualified production costs
12 incurred by a qualified production in any county of
13 the State with a population of seven hundred thousand
14 or less.

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

19 In the case of a partnership, S corporation, estate, or
20 trust, the tax credit allowable is for qualified production
21 costs incurred by the entity for the taxable year. The cost



1 upon which the tax credit is computed shall be determined at the
2 entity level. Distribution and share of credit shall be
3 determined by rule.

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

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

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

16 (c) If the tax credit under this section exceeds the
17 taxpayer's income tax liability, the excess of credits over
18 liability shall be refunded to the taxpayer; provided that no
19 refunds or payment on account of the tax credits allowed by this
20 section shall be made for amounts less than \$1. All claims,
21 including any amended claims, for tax credits under this section



1 shall be filed on or before the end of the twelfth month
2 following the close of the taxable year for which the credit may
3 be claimed. Failure to comply with the foregoing provision
4 shall constitute a waiver of the right to claim the credit.

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

6 (1) Meet the definition of a qualified production

7 specified in subsection [~~(m)~~] (n);

8 (2) Have qualified production costs totaling at least

9 [~~\$200,000~~] \$100,000;

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

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

15 (5) Provide evidence when making any claim for products or
16 services acquired or rendered outside of this State
17 that reasonable efforts were unsuccessful to secure
18 and use comparable products or services within this
19 State;

20 (6) Provide evidence of financial or in-kind contributions
21 or educational or workforce development efforts, in



1 partnership with related local industry labor
2 organizations, educational institutions, or both,
3 toward the furtherance of the local film and
4 television and digital media industries[-]; and

5 (7) Submit to the department of taxation an application
6 processing fee for the motion picture, digital media,
7 and film production income tax credit in an amount
8 equal to one-tenth of one per cent of the tax credit
9 claimed by the qualified production no later than the
10 deadline prescribed in subsection (c); provided that:

11 (A) The department of taxation may prescribe the form
12 and method by which this fee is remitted,
13 including through electronic means; and

14 (B) The fees collected under this paragraph shall be:

15 (i) Capped at \$20,000; and

16 (ii) Deposited into the tax administration
17 special fund established under section
18 235-20.5.

19 (e) On or after July 1, 2006, no qualified production cost
20 that has been financed by investments for which a credit was



1 claimed by any taxpayer pursuant to section 235-110.9 is
2 eligible for credits under this section.

3 (f) To receive the tax credit, the taxpayer shall first
4 prequalify the production for the credit by registering with the
5 department of business, economic development, and tourism during
6 the development or preproduction stage.

7 (g) The director of taxation shall prepare forms as may be
8 necessary to claim a credit under this section. The director
9 may also require the taxpayer to furnish information to
10 ascertain the validity of the claim for credit made under this
11 section and may adopt rules necessary to effectuate the purposes
12 of this section pursuant to chapter 91.

13 (h) Every taxpayer claiming a tax credit under this
14 section for a qualified production shall, no later than ninety
15 days following the end of each taxable year in which qualified
16 production costs were expended, submit a written, sworn
17 statement to the department of business, economic development,
18 and tourism[~~, together with a verification review by a qualified~~
19 ~~certified public accountant using procedures prescribed by the~~
20 ~~department of business, economic development, and tourism,~~
21 ~~identifying+]~~ that identifies:



- 1 (1) All qualified production costs as provided by
2 subsection (a), if any, incurred in the previous
3 taxable year;
- 4 (2) The amount of tax credits claimed pursuant to this
5 section, if any, in the previous taxable year; and
- 6 (3) The number of total hires versus the number of local
7 hires by category and by county.

8 This information may be reported from the department of
9 business, economic development, and tourism to the legislature
10 [~~in redacted form~~] pursuant to subsection (i)(4).

11 (i) The department of business, economic development, and
12 tourism shall:

- 13 (1) Maintain records of the names of the taxpayers and
14 qualified productions thereof claiming the tax credits
15 under subsection (a);
- 16 (2) Obtain and total the aggregate amounts of all
17 qualified production costs per qualified production
18 and per qualified production per taxable year;
- 19 (3) Provide a letter to the director of taxation
20 specifying the amount of the tax credit per qualified
21 production for each taxable year that a tax credit is



1 claimed and the cumulative amount of the tax credit
2 for all years claimed; and
3 (4) Submit a report to the legislature no later than
4 twenty days prior to the convening of each regular
5 session detailing the non-aggregated qualified
6 production costs that form the basis of the tax credit
7 claims and expenditures, itemized by taxpayer, in a
8 redacted format to preserve the confidentiality and
9 which shall include the dollar amount claimed, name of
10 company, and name of the qualified production of the
11 taxpayers claiming the credit.

12 Upon each determination required under this subsection, the
13 department of business, economic development, and tourism shall
14 issue a letter to the taxpayer, regarding the qualified
15 production, specifying the qualified production costs and the
16 tax credit amount qualified for in each taxable year a tax
17 credit is claimed[-]; provided that the department of business,
18 economic development, and tourism shall issue the letter to the
19 taxpayer no later than ten months after receipt of the
20 taxpayer's statement under subsection (h). The taxpayer for
21 each qualified production shall file the letter with the



1 taxpayer's tax return for the qualified production to the
2 department of taxation. Notwithstanding the authority of the
3 department of business, economic development, and tourism under
4 this section, the director of taxation may audit and adjust the
5 tax credit amount to conform to the information filed by the
6 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 (l) The total amount of tax credits allowed under this
12 section in any particular year shall be \$50,000,000; however, if
13 the total amount of credits applied for in any particular year
14 exceeds the aggregate amount of credits allowed for [~~such~~] that
15 year under this section, the excess shall be treated as having
16 been applied for in the subsequent year and shall be claimed in
17 [~~such~~] the subsequent year; provided that no excess shall be
18 allowed to be claimed after December 31, [~~2025-~~] 2032.

19 (m) Every person making payment to a loan-out company
20 shall withhold an amount equal to one-half of one per cent of
21 qualified production costs for services performed in the State;



1 provided that the amount withheld shall be remitted to the
2 department of taxation to the credit of the general excise tax
3 account of the loan-out company to whom the qualified production
4 costs were paid or will be paid. The amount withheld shall be
5 remitted no later than the twentieth day following the close of
6 the month after the qualified production costs are paid or
7 incurred. Taxpayers who fail to comply with this subsection
8 shall be subject to the applicable interest and penalties
9 pursuant to chapter 231 and section 235-104.

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

11 "Commercial":

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

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

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

20 "Digital media" means production methods and platforms
21 directly related to the creation of cinematic imagery and



1 content, specifically using digital means, including but not
2 limited to digital cameras, digital sound equipment, and
3 computers, to be delivered via film, videotape, interactive game
4 platform, or other digital distribution media.

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

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

19 "Qualified production":

20 (1) Means a production, with expenditures in the State,
21 for the total or partial production of a feature-



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

- 16 (2) Does not include:
- 17 (A) News;
 - 18 (B) Public affairs programs;
 - 19 (C) Non-national magazine or talk shows;
 - 20 (D) Televised sporting events or activities;
 - 21 (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 4. Section 235-20.5, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§235-20.5 Tax administration special fund; established.

2 (a) There is established a tax administration special fund,
3 into which shall be deposited:

4 (1) Fees collected under sections 235-20 and 235-110.9;

5 (2) Revenues collected by the special enforcement section
6 pursuant to section 231-85; provided that in each
7 fiscal year, of the total revenues collected by the
8 special enforcement section, all revenues in excess of
9 \$2,000,000 shall be deposited into the general fund;
10 ~~[and]~~

11 (3) Fines assessed pursuant to section 237D-4~~[+]~~; and

12 (4) Application processing fees collected under section
13 231-36.8 and 237- .

14 (b) The moneys in the fund shall be used for the following
15 purposes:

16 (1) Issuing comfort letters, letter rulings, written
17 opinions, and other guidance to taxpayers;

18 (2) ~~[Issuing certificates under [section] 235-110.9+]~~
19 Processing qualified production applications for the
20 motion picture, digital media, and film production
21 income tax credit provided under section 235-17 and



1 applications for the withholding of taxes under
2 section 237- ;

3 (3) Administering the operations of the special
4 enforcement section;

5 (4) Funding support staff positions in the special
6 enforcement section; and

7 (5) Developing, implementing, and providing taxpayer
8 education programs, including tax publications."

9 SECTION 5. The department of taxation may establish four
10 full-time equivalent (4.0 FTE) tax auditor positions to examine
11 claims for the motion picture, digital media, and film
12 production income tax credit pursuant to section 235-17, Hawaii
13 Revised Statutes, and other tax expenditures.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Motion Picture, Digital Media, and Film Production Tax Credit; Loan-out Companies; Qualified Productions; Withholdings; Tax Administration Special Fund; Positions

Description:

Requires every person making payment to a loan-out company and claiming the film production tax credit to withhold and remit to the Department of Taxation a portion of all payments to the loan-out company. Reducing the minimum amount of qualified production costs necessary to claim the film production tax credit. Removes the requirement for productions to submit a verification review by a qualified certified public accountant when applying for the film production tax credit. Requires the report by the Department of Business, Economic Development, and Tourism to include the dollar amount claimed, name of the company, and name of the qualified production of the taxpayer. Extends the period during which excess income tax credits may be claimed to 12/31/2032. Requires a taxpayer claiming the film production tax credit to submit an application processing fee. Amends the use of the tax administration special fund. Authorizes the Department of Taxation to establish 4 full-time equivalent tax auditor positions. Effective 7/1/2050. (SD2)

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

