
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 motion
5 picture, digital media, and film production income tax credit.

6 (a) Every person making payment to a loan-out company and
7 claiming a tax credit pursuant to section 235-17 shall deduct
8 and withhold ten per cent of all payments to loan-out companies
9 for services performed in Hawaii. The amounts withheld under
10 this section shall be remitted as specified in subsection (b).
11 The amounts withheld under this section shall be deemed to be a
12 tax withholding for the benefit of the loan-out company's
13 employee performing the service.

14 (b) Every person required to withhold and remit taxes
15 under this section shall make a return of the amount withheld
16 and file the return with the department of taxation no later
17 than thirty calendar days from the date on which the payment was



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

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

10 (c) For the purposes of this chapter, "loan-out company"
11 means a wholly-owned entity formed on behalf of a person or
12 persons that serves as a separate entity that constitutes the
13 person's or persons' means of entering a contact with a third
14 party for the purpose of providing services to the third party."

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

17 "§235-17 Motion picture, digital media, and film
18 production income tax credit. (a) Any law to the contrary
19 notwithstanding, there shall be allowed to each taxpayer subject
20 to the taxes imposed by this chapter, an income tax credit that
21 shall be deductible from the taxpayer's net income tax



1 liability, if any, imposed by this chapter for the taxable year
2 in which the credit is properly claimed. The amount of the
3 credit shall be:

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

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

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

16 In the case of a partnership, S corporation, estate, or
17 trust, the tax credit allowable is for qualified production
18 costs incurred by the entity for the taxable year. The cost
19 upon which the tax credit is computed shall be determined at the
20 entity level. Distribution and share of credit shall be
21 determined by rule.



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

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

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

13 (c) If the tax credit under this section exceeds the
14 taxpayer's income tax liability, the excess of credits over
15 liability shall be refunded to the taxpayer; provided that no
16 refunds or payment on account of the tax credits allowed by this
17 section shall be made for amounts less than \$1. All claims,
18 including any amended claims, for tax credits under this section
19 shall be filed on or before the end of the twelfth month
20 following the close of the taxable year for which the credit may



1 be claimed. Failure to comply with the foregoing provision
2 shall constitute a waiver of the right to claim the credit.

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

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

6 (2) Have qualified production costs totaling at least
7 \$200,000;

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

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

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

18 (6) Provide evidence of financial or in-kind contributions
19 or educational or workforce development efforts, in
20 partnership with related local industry labor
21 organizations, educational institutions, or both,



1 toward the furtherance of the local film and
2 television and digital media industries.

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

7 (f) To receive the tax credit, the taxpayer shall first
8 prequalify the production for the credit by registering with the
9 department of business, economic development, and tourism during
10 the development or preproduction stage.

11 (g) The director of taxation shall prepare forms as may be
12 necessary to claim a credit under this section[-], including any
13 application processing fees, as necessary. The director may
14 also require the taxpayer to furnish information to ascertain
15 the validity of the claim for credit made under this section and
16 may adopt rules necessary to effectuate the purposes of this
17 section pursuant to chapter 91.

18 (h) Every taxpayer claiming a tax credit under this
19 section for a qualified production with qualified production
20 costs that exceed \$1,000,000 shall, no later than ninety days
21 following the end of each taxable year in which qualified



1 production costs were expended, submit a written, sworn
2 statement to the department of business, economic development,
3 and tourism, together with a verification review by a qualified
4 certified public accountant using procedures prescribed by the
5 department of business, economic development, and tourism,
6 identifying:

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

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

17 (i) The department of business, economic development, and
18 tourism shall:

- 19 (1) Maintain records of the names of the taxpayers and
20 qualified productions thereof claiming the tax credits
21 under subsection (a);



- 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 and
15 which shall include the dollar amount claimed, name of
16 company, and name of the qualified production of the
17 taxpayers claiming the credit.

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



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

9 (j) Total tax credits claimed per qualified production
10 shall not exceed \$15,000,000.

11 (k) Qualified productions shall comply with subsections
12 (d), (e), (f), and (h).

13 (l) The total amount of tax credits allowed under this
14 section in any particular year shall be \$50,000,000; however, if
15 the total amount of credits applied for in any particular year
16 exceeds the aggregate amount of credits allowed for [~~such~~] that
17 year under this section, the excess shall be treated as having
18 been applied for in the subsequent year and shall be claimed in
19 [~~such~~] the subsequent year; provided that no excess shall be
20 allowed to be claimed after December 31, [~~2025-~~] 2032.



1 (m) Each qualified production shall withhold an amount
2 equal to 4.5 per cent from qualified production costs; provided
3 that the amount withheld shall be remitted to the department of
4 taxation to the credit of the general excise tax account of the
5 loan-out company to whom the qualified production costs were
6 paid or will be paid. The amount withheld shall be remitted no
7 later than thirty calendar days after the qualified production
8 costs are paid or incurred. Taxpayers who fail to comply with
9 this subsection shall be subject to the applicable interest and
10 penalties pursuant to chapter 231 and section 235-104.

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

12 "Commercial":

- 13 (1) Means an advertising message that is filmed using
- 14 film, videotape, or digital media, for dissemination
- 15 via television broadcast or theatrical distribution;
- 16 (2) Includes a series of advertising messages if all parts
- 17 are produced at the same time over the course of six
- 18 consecutive weeks; and
- 19 (3) Does not include an advertising message with
- 20 Internet-only distribution.



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

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

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

21 "Qualified production":



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

- 18 (2) Does not include:
- 19 (A) News;
 - 20 (B) Public affairs programs;
 - 21 (C) Non-national magazine or talk shows;



- 1 (D) Televised sporting events or activities;
- 2 (E) Productions that solicit funds;
- 3 (F) Productions produced primarily for industrial,
4 corporate, institutional, or other private
5 purposes; and
- 6 (G) Productions that include any material or
7 performance prohibited by chapter 712.

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

- 15 (1) Costs incurred during preproduction such as location
16 scouting and related services;
- 17 (2) Costs of set construction and operations, purchases or
18 rentals of wardrobe, props, accessories, food, office
19 supplies, transportation, equipment, and related
20 services;
- 21 (3) Wages or salaries of cast, crew, and musicians;



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



1 SECTION 3. Section 235-20.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§235-20.5 Tax administration special fund; established.

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

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

7 (2) Revenues collected by the special enforcement section
8 pursuant to section 231-85; provided that in each
9 fiscal year, of the total revenues collected by the
10 special enforcement section, all revenues in excess of
11 \$2,000,000 shall be deposited into the general fund;

12 [and]

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

14 (4) Application processing fees collected under section
15 231-36.8 and 237- .

16 (b) The moneys in the fund shall be used for the following
17 purposes:

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

20 (2) ~~[Issuing certificates under [section] 235-110.9,]~~

21 Processing qualified production applications for the



1 motion picture, digital media, and film production
2 income tax credit provided under sections 235-17 and
3 237- ;

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

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

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

10 SECTION 4. The department of taxation may establish four
11 full-time equivalent (4.0 FTE) tax auditor positions to examine
12 claims for the motion picture, digital media, and film
13 production income tax credit provided under section 235-17,
14 Hawaii Revised Statutes, and other tax expenditures. Positions
15 established pursuant to this section shall be funded with moneys
16 from the tax administration special fund pursuant to section
17 235-20.5(b), Hawaii Revised Statutes.

18 SECTION 5. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect on July 1, 2022, and
2 shall apply to payments made to a taxpayer or loan-out company
3 after June 30, 2022.



Report Title:

Taxes; Withholding; Motion Picture, Digital Media, And Film Production Income Tax Credit; Tax Administration Special Fund; Department of Business, Economic Development, and Tourism; Department of Taxation

Description:

Establishes a general excise tax withholding requirement on payments to loan-out companies for services performed in Hawaii for persons claiming the motion picture, digital media, and film production income tax credit (income tax credit). Requires taxpayers claiming the income tax credit to submit a sworn statement and verification review to the Department of Business, Economic Development, and Tourism (DBEDT) only if qualified production costs exceed \$1,000,000. Requires reports by DBEDT to the Legislature on the income tax credit to identify the dollar amount claimed, name of company, and name of program claiming the credit. Extends the period during which excess income tax credits may be claimed to December 31, 2032. Requires qualified productions that claim the income tax credit to withhold a certain amount and remit that amount within thirty calendar days to the Department of Taxation (DOTAX) to the credit of the general excise tax account of the loan-out company. Amends the uses of the Tax Administration Special Fund. Allows DOTAX to establish four full-time equivalent tax auditor positions to examine claims for the income tax credit and other tax expenditures and to establish application processing fees. (SD1)

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