
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~~[+]~~ equal to the sum of the following:

11 (1) Either:

12 (A) Twenty-two per cent of the qualified production
13 costs incurred by a qualified production in any
14 county of the State with a population of over
15 seven hundred thousand; or

16 ~~[-2-]~~ (B) Twenty-seven per cent of the qualified production
17 costs incurred by a qualified production in any



1 county of the State with a population of seven
2 hundred thousand or less[-];

3 (2) An additional five per cent of the qualified
4 production costs incurred by a qualified production
5 with a workforce of at least:

6 (A) Eighty per cent local hires in the first taxable
7 year or second consecutive taxable year that the
8 additional credit amount is claimed;

9 (B) Eighty-two per cent local hires in the third or
10 fourth consecutive taxable year that the
11 additional credit amount is claimed; and

12 (C) Eighty-five per cent local hires in the fifth
13 consecutive taxable year that the additional
14 credit amount is claimed; and

15 (3) Of the following, a single option that represents the
16 greatest value:

17 (A) An additional five per cent of the qualified
18 production costs incurred by a qualified
19 production with an above-the-line workforce of at
20 least thirty per cent local hires;



1 (B) An additional three per cent of the qualified
2 production costs incurred by a qualified
3 production that invests in qualified production
4 infrastructure;

5 (C) An additional three per cent of the qualified
6 production costs incurred by a qualified
7 production that features indigenous content; or

8 (D) An additional two per cent of the qualified
9 production costs incurred by a qualified
10 production that conducts post-production in the
11 State for qualified productions filmed in the
12 State;

13 provided that the Hawaii film office, in collaboration
14 with the department of taxation, shall establish
15 policies to determine standards and minimum
16 qualifications for investment in qualified production
17 infrastructure and featuring of indigenous content
18 pursuant to subparagraphs (B) and (C).

19 A qualified production occurring in more than one county may
20 prorate its expenditures based upon the amounts spent in each



1 county, if the population bases differ enough to change the
2 percentage of tax credit.

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

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

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

16 (b) The credit allowed under this section shall be claimed
17 against the net income tax liability for the taxable year. For
18 the purposes of this section, "net income tax liability" means
19 net income tax liability reduced by all other credits allowed
20 under this chapter.



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

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

- 13 (1) Meet the definition of a qualified production
14 specified in subsection [~~(e)~~] (p);
- 15 (2) Have qualified production costs totaling at least
16 \$100,000;
- 17 (3) Provide the State a qualified Hawaii promotion, which
18 shall be at a minimum, a shared-card, end-title screen
19 credit, where applicable;
- 20 (4) Provide evidence of reasonable efforts to hire local
21 talent and crew;



- 1 (5) Provide evidence when making any claim for products or
2 services acquired or rendered outside of this State
3 that reasonable efforts were unsuccessful to secure
4 and use comparable products or services within this
5 State;
- 6 (6) Provide evidence of financial or in-kind contributions
7 or educational or workforce development efforts, in
8 partnership with related local industry labor
9 organizations, educational institutions, or both,
10 toward the furtherance of the local film and
11 television and digital media industries;
- 12 (7) Provide evidence of reasonable efforts to comply with
13 all applicable requirements under title 14, including
14 tax return filing and payments; and
- 15 (8) Provide complete responses to the department of
16 taxation's inquiries and document requests, in the
17 form prescribed by the department, no later than
18 ninety days from the inquiry or request;
- 19 provided that a taxpayer shall be given notice of and an
20 opportunity to cure any failure to meet the requirements of this
21 subsection, including chapter 237, within thirty days of receipt



1 of the notice; provided further that nothing in this subsection
2 shall be interpreted as waiving any act required by this
3 section.

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

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

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

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



1 statement to the department of business, economic development,
2 and tourism that identifies:

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

10 This information may be reported from the department of
11 business, economic development, and tourism to the legislature
12 pursuant to subsection (i) (4). No later than January 1, 2027,
13 and each January 1 thereafter, each film production that is
14 claiming a tax credit pursuant to this section shall obtain an
15 independent third-party certification of qualified production
16 costs eligible for the motion picture, digital media, and film
17 production income tax credit in the form of a tax opinion, as
18 required under this subsection, submitted to the department of
19 business, economic development, and tourism.

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 and
18 that shall include the dollar amount claimed, name of
19 company, and name of the qualified production of the
20 taxpayers claiming the credit.



1 (j) Upon each determination required under subsection (i),
2 the department of business, economic development, and tourism
3 shall issue a letter to the taxpayer, regarding the qualified
4 production, specifying the qualified production costs and the
5 tax credit amount qualified for in each taxable year a tax
6 credit is claimed; provided that the department of business,
7 economic development, and tourism shall issue the letter to the
8 taxpayer no later than seven months after receipt of the
9 taxpayer's statement under subsection (h). The taxpayer for
10 each qualified production shall file the letter with the
11 taxpayer's tax return for the qualified production to the
12 department of taxation. Notwithstanding the authority of the
13 department of business, economic development, and tourism under
14 this section, the director of taxation may audit and adjust the
15 tax credit amount to conform to the information filed by the
16 taxpayer.

17 (k) Each taxpayer claiming a tax credit under this section
18 shall submit to the department of business, economic
19 development, and tourism a fee for the motion picture, digital
20 media, and film production income tax credit in an amount equal
21 to 0.2 per cent of the tax credit claimed by the qualified



1 production no later than the deadline stated in subsection (c).
2 The department of business, economic development, and tourism
3 may prescribe the form and method by which this fee is remitted,
4 including through electronic means. The fees collected under
5 this subsection shall be deposited into the Hawaii film and
6 creative industries development special fund under section 201-
7 113.

8 (1) Total tax credits claimed per qualified production
9 shall not exceed \$17,000,000[-]; provided that:

10 (1) The department of business, economic development, and
11 tourism may waive this cap amount for one qualified
12 production each taxable year; provided further that
13 the total tax credits claimed by a qualified
14 production in any taxable year shall not exceed
15 seventy per cent of the total amount of tax credits
16 allowed under this section pursuant to subsection (n);

17 (2) No qualified production shall have the cap amount
18 waived for more than two taxable years; and

19 (3) The department of business, economic development, and
20 tourism shall submit a report to the legislature no
21 later than twenty days prior to the convening of each



1 regular session that provides a justification for the
2 selection of the qualified production designated for
3 the waiver and the status of the qualified production.

4 (m) Qualified productions shall comply with subsections
5 (d), (e), (f), (h), and (k).

6 (n) The total amount of tax credits allowed under this
7 section in any particular year shall be \$50,000,000; however, if
8 the total amount of credits applied for in any particular year
9 exceeds the aggregate amount of credits allowed for that year
10 under this section, the excess shall be treated as having been
11 applied for in the subsequent year and shall be claimed in the
12 subsequent year; provided that no excess shall be allowed to be
13 claimed after December 31, 2032.

14 (o) The Hawaii film office shall submit an annual report
15 to the legislature no later than twenty days prior to the
16 convening of each regular session. The annual report shall
17 include the following information:

18 (1) A list of the qualified productions that received the
19 tax credit;



1 (2) How funds received from the tax credit were spent in
2 the State and to what extent local communities,
3 workers, and businesses benefited;

4 (3) The impact of the tax credit on tax revenue, job
5 creation, industry development, and tourism; and

6 (4) An analysis of why the tax credit provides greater
7 long-term value to the State than other tax credits
8 and alternative uses of state funds.

9 [~~o~~] (p) For the purposes of this section:

10 "Above-the-line workforce" means the employees involved
11 with the production of a qualified production whose salaries are
12 negotiated before the commencement of production, including but
13 not limited to actors, directors, producers, and writers.

14 "Commercial":

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

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



1 (3) Does not include an advertising message with Internet-
2 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 twenty-
9 two episodes) of a television series regularly filmed
10 in the State (if the number of episodes per single
11 season exceeds twenty-two, additional episodes for the
12 same season shall constitute a separate qualified
13 production), television special, single television
14 episode that is not part of a television series
15 regularly filmed or based in the State, national
16 magazine show, or national talk show. For the
17 purposes of subsections (d) and (1), 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 that are subject to the
13 general excise tax under chapter 237 at the highest rate of tax
14 or income tax under this chapter if the costs are not subject to
15 general excise tax and that have not been financed by any
16 investments for which a credit was or will be claimed pursuant
17 to section 235-110.9. Qualified production costs include but
18 are not limited to:

- 19 (1) Costs incurred during preproduction such as location
20 scouting and related services;



- 1 (2) Costs of set construction and operations, purchases or
- 2 rentals of wardrobe, props, accessories, food, office
- 3 supplies, transportation, equipment, and related
- 4 services;
- 5 (3) Wages or salaries of cast, crew, and musicians;
- 6 (4) Costs of photography, sound synchronization, lighting,
- 7 and related services;
- 8 (5) Costs of editing, visual effects, music, other post-
- 9 production, and related services;
- 10 (6) Rentals and fees for use of local facilities and
- 11 locations, including rentals and fees for use of state
- 12 and county facilities and locations that are not
- 13 subject to general excise tax under chapter 237 or
- 14 income tax under this chapter;
- 15 (7) Rentals of vehicles and lodging for cast and crew;
- 16 (8) Airfare for flights to or from Hawaii, and interisland
- 17 flights;
- 18 (9) Insurance and bonding;
- 19 (10) Shipping of equipment and supplies to or from Hawaii,
- 20 and interisland shipments; and



1 (11) Other direct production costs specified by the
2 department in consultation with the department of
3 business, economic development, and tourism;
4 provided that any government-imposed fines, penalties, or
5 interest that are incurred by a qualified production within the
6 State shall not be "qualified production costs". "Qualified
7 production costs" does not include any costs funded by any
8 grant, forgivable loan, or other amounts not included in gross
9 income for purposes of this chapter."

10 SECTION 2. Act 143, Session Laws of Hawaii 2017, is
11 amended by amending section 6 to read as follows:

12 "SECTION 6. [~~No later than January 1, 2018, and each~~
13 ~~January 1 thereafter, each film production that has production~~
14 ~~expenditures of \$1,000,000 or more and is claiming a tax credit~~
15 ~~pursuant to section 235-17, Hawaii Revised Statutes, shall~~
16 ~~obtain an independent third party certification of qualified~~
17 ~~production costs eligible for the motion picture, digital media,~~
18 ~~and film production income tax credit in the form of a tax~~
19 ~~opinion, as required under section 235-17(h), Hawaii Revised~~
20 ~~Statutes, submitted to the department of business, economic~~
21 ~~development, and tourism.] Repealed."~~



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

3 SECTION 4. This Act shall take effect on July 1, 3000, and
4 shall apply to taxable years beginning after December 31, 2025;
5 provided that on January 1, 2033, this Act shall be repealed to
6 coincide with the repeal date of Act 88, Session Laws of Hawaii
7 2006, as amended by Act 89, Session Laws of Hawaii 2013, as
8 amended by Act 143, Session Laws of Hawaii 2017, as amended by
9 Act 217, Session Laws of Hawaii 2022, and section 235-17, Hawaii
10 Revised Statutes, shall be reenacted in the form in which it
11 read on the day before the effective date of Act 88, Session
12 Laws of Hawaii 2006.



Report Title:

DBEDT; Motion Picture, Digital Media, and Film Production Income Tax Credit; Local Workforce Incentive; Qualified Production Incentives; Third-party Certification; Per Production Cap; Waiver; Hawaii Film Office; Report.

Description:

Amends the Motion Picture, Digital Media, and Film Production Income Tax Credit (film tax credit) by providing additional credits to qualified productions that have a workforce of at least eighty per cent local hires in the first taxable year or second consecutive taxable year and meet other specific requirements, then increasing the local workforce threshold to eighty-two per cent in the third or fourth consecutive taxable year and eighty-five per cent in the fifth consecutive taxable year, that the additional credit is claimed; requiring independent third-party certification of qualified production costs for all film productions claiming the film tax credit; authorizing DBEDT to waive the credit cap per qualified production for one qualified production each fiscal year; and requiring the Hawaii Film Office to submit an annual report to the Legislature. Sunsets 1/1/2033. Effective 7/1/3000. (HD2)

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

