FilmHawaii

HAWAII FILM OFFICE | State of Hawaii, Department of Business, Economic Development and Tourism| 250 South Hotel St., 5th Floor | Honolulu, HI 96813
Mailing Address: P.O. Box 2359 | Honolulu, HI 96804 | Phone (808) 586-2570 | Fax (808) 586-2572 | incentives@hawaiifilmoffice.com

Tax Incentives

As if our spectacular locations, welcoming climate, and relative proximity to the U.S. mainland weren't enticing enough, the state of Hawaii offers two different tax incentives that may be applied to film and television productions:

15-20% Motion Picture, Digital Media, & Film Production Income Tax Credit

This is a refundable tax credit based on a production company's Hawaii expenditures while producing a qualified film, television, commercial, or digital media project. The credit equals 15% of qualified production costs incurred on Oahu, and 20% on the neighbor islands (Big Island, Kauai, Lanai, Maui, Molokai).

Royalties Tax Exemption

Royalties derived from performing arts products are excluded from a Hawaii taxpayer's income and not subject to state income tax.

For further information, contact the Hawaii Film Office at 808-586-2570 (http://www.hawaiifilmoffice.com) email: incentives@hawaiifilmoffice.com or the Hawaii Department of Taxation’s Rules Office at 808-587-1577 (http://www.state.hi.us/tax/index.htm).

15-20% Motion Picture, Digital Media, and Film Production Income Tax Credit

The *Motion Picture, Digital Media, and Film Production Income Tax Credit* is a refundable income tax credit based on a production company's Hawaii expenditures while producing a qualified film, television, commercial, or digital media project.

What is the tax credit?

- The credit is calculated as a percentage of "qualified production costs" incurred in Hawaii
- The credit shall be claimed against the Hawaii taxpayer's net income tax liability for the taxable year in which the credit is properly claimed
- If the credit exceeds net income tax liability, the excess of credits over liability shall be refunded
- The credit was established by Act 88 in 2006 and is effective July 1, 2006 through December 31, 2015
- The credit is administered by the Hawaii Film Office and the Hawaii Department of Taxation

How much is the tax credit?

- 15% of total "qualified production costs" incurred while filming on Oahu
- 20% of total "qualified production costs" incurred while filming on a neighbor island (Big Island, Kauai, Lanai, Maui, Molokai)
- There is an $8 million cap per "qualified production"

Who is eligible for the tax credit?

- A company that produces a "qualified production" that spends a minimum of $200,000 in "qualified production costs" in Hawaii, and belongs to one of the following categories:
    - Feature film (narrative, documentary, experimental, student)
    - Short film (narrative, documentary, experimental, student)
    - Television movie
    - Commercial (an advertising message filmed within 6 consecutive weeks in Hawaii for dissemination via television broadcast or theatrical distribution)
    - Music video
    - Interactive game
    - Television series pilot
    - Single season (up to 22 episodes) of a television series regularly filmed in the State (if the number of episodes per single season exceeds 22, additional episodes for the same season shall constitute a separate "qualified production")
    - Television special
    - Single television episode that is not part of a TV series regularly filmed or based in the State
    - National magazine show
    - National talk show

Which "qualified production costs" are used in calculating the credit amount?

- "Qualified production costs" must meet <u>all</u> of the following requirements:
    - Costs that are incurred in Hawaii
    - Costs that are subject to Hawaii's general excise tax or income tax
        - **Tax Information Release 2006-02: (http://www6.hawaii.gov/tax/tir/1990_09/tir06-02.pdf)**
        - **Tax Information Release 2009-05 (http://www6.hawaii.gov/tax/tir/1990_09/tir09-05.pdf)**
        - **Tax Information Release 2010-04: *(*http://www6.hawaii.gov/tax/tir/tir10-04.pdf)**
    - Costs that have not been financed by investments for which an investment tax credit under Hawaii Revised Statutes §235-110.9 ("Act 221 credits") was or will be claimed
    - Costs that belong to the following general categories (not an exhaustive list):
        (1) Costs incurred during preproduction, such as location scouting and related services;
        (2) Costs of set construction and operations, purchases or rentals of wardrobe, props, accessories, food, office supplies, transportation, equipment, and related services;
        (3) Wages or salaries of cast, crew, and musicians;
        (4) Costs of photography, sound synchronization, lighting, and related services;
        (5) Costs of editing, visual effects, music, other post-production, and related services;
        (6) Rentals and fees for use of local facilities and locations;
        (7) Rentals of vehicles and lodging for cast and crew;
        (8) Airfare for flights to or from Hawaii, and interisland flights;

(9) Insurance and bonding; or
(10) Shipping of equipment and supplies to or from Hawaii, and interisland shipments.

Are there additional requirements for claiming the tax credit?

- During production, a "qualified production" must:
  - Demonstrate reasonable efforts to hire local talent and crew. Such efforts must be reported on the "Hawaii Production Report" described below.
  - Provide evidence of financial or in-kind contributions or educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both, toward the furtherance of the local film and television and digital media industries. Such contributions must be reported on the "Hawaii Production Report."
- Provide a screen credit or the like to the State of Hawaii, if applicable.
- Provide a DVD copy of the production and an electronic press kit (if one exists) to the Hawaii Film Office.

Who is NOT eligible for the tax credit?

- Productions that spend less than $200,000 in Hawaii
- Productions that belong to the following categories (not an exhaustive list):
  - Daily news
  - Public affairs programs
  - Non-national magazine or talk shows
  - Televised sporting events or activities
  - Productions that solicit funds
  - Productions produced primarily for industrial, corporate, institutional, or other private purposes
  - Advertising with internet-only distribution
  - Pornography

How is the credit claimed?

- At least one week prior to the first Hawaii shoot date, a "qualified production" must register with the Hawaii Film Office by submitting a "Production Registration Form" to get pre-certified for the credit. The Film Office will issue a pre-certification acknowledgment to the applicant.
- No later than 90 days following the end of each taxable year in which "qualified production costs" were expended, a "qualified production" must submit a "Hawaii Production Report," detailed Hawaii expenditure report, and final crew list to the Hawaii Film Office. If, based on the information provided, the applicant qualifies for the credit, the Film Office will file a credit certification letter with the Department of Taxation, and provide a copy to the applicant. Note that the Dept. of Taxation is the ultimate arbiter of tax credit disbursements, and credit eligibility is ultimately subject to the Dept.'s review and, in some cases, audit.
- The applicant must then submit the following forms to the Department of Taxation on or before the prescribed deadline for the filing of your Hawaii income taxes: (1) Hawaii State Income Tax Return, (2) Form N-340, Motion Picture, Digital Media, and Film Production Income Tax Credit, (3) Schedule CR, Schedule of Tax Credits, and (4) Copy of credit certification letter. If the applicant has multiple qualified productions in any taxable year, it must aggregate on a single return the qualified production costs for which it is claiming the credits. (Caution: All claims, including any amended claims, must be filed on or before the end of the 12th month following the close of the taxable year for which the tax credit may be claimed.) Tax forms can be found at: **http://www.state.hi.us/tax/a1_forms.htm**.

When and how will I receive my credit?

- The credit shall be claimed against the net income tax liability for the taxable year. "Net income tax liability" means net income tax liability reduced by all other credits allowed under Hawaii income tax law.
- If the credit exceeds your income tax liability, the excess of credits over liability shall be refunded to you, provided that no refunds or payment on account of the credits shall be made for amounts less than $1.
- Approximately 6-8 weeks after the Hawaii Dept. of Taxation receives your tax forms, any refund will be sent to you in the form of a check or directly deposited into your bank account.

Statutory and Tax References:

Statute: HRS §235-17 (Established by Act 88 in 2006):
http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0235/HRS_0235-0017.htm
• Tax Information Release 2006-02 (http://www6.hawaii.gov/tax/tir/1990_09/tir06-02.pdf),
• Tax Information Release 2009-05 (http://www6.hawaii.gov/tax/tir/1990_09/tir09-05.pdf)

• Tax Information Release 2010-04**: (**http://www6.hawaii.gov/tax/tir/tir10-04.pdf)
• General: Department of Taxation: www.state.hi.us/tax/

Royalties Tax Exemption

Amounts received by an individual or "qualified high technology business" as royalties, copyright, and trade secrets, are excluded from gross income, adjusted gross income and taxable income on the taxpayer's Hawaii state income tax filing. With respect to "performing arts products," this exclusion extends to:

- The authors of performing arts products, or parts thereof, with or without regard to the application of the work for hire doctrine under United States copyright law.
- The assignors, licensors, and licensees of any copyright rights in performing arts products, or any parts thereof.

Definitions:

- **Qualified High Technology Business (QHTB):**
    - A business employing or owning capital or property or maintaining an office in Hawaii, provided that:
        - More that 50% of the total business activities are "qualified research" and that the business conducts more than 75% of its qualified research in Hawaii, or,
        - More than 75% of its gross income is derived from qualified research and that this income is received from products sold from, manufactured in, or produced in Hawaii, and services performed in Hawaii.
    - In certain cases, a company's transactions must have "economic substance" (i.e., significantly change a taxpayer's economic position and have a substantial non-tax purpose) to qualify as QHTB.

- **Qualified Research:**
    - Development and design of computer software for ultimate commercial sale, lease, license or to be otherwise marketed, for economic consideration. With respect to the software's development and design, the business shall have substantial control and retain substantial rights to the resulting intellectual property.
    - Biotechnology
    - Performing arts products [Definition below]
    - Sensor and optic technologies
    - Ocean sciences
    - Astronomy
    - Non-fossil fuel energy-related technology

- **Performing Arts Products:**
    - Audio files, video files, audio-video files, computer animation, and other entertainment products perceived by or through the operation of a computer; and
    - Commercial television and film products for sale or license, and reuse or residual fee payments from these products.

References:

- General: Department of Taxation: http://www.state.hi.us/tax/
- Statute: Hawaii Revised Statutes (HRS) Section 235-7.3: http://www.capitol.hawaii.gov/hrscurrent/Vol04_Ch0201-0257/HRS0235/HRS_0235-0007_0003.htm