

FilmHawaii

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FREQUENTLY ASKED QUESTIONS

20-25% Motion Picture, Digital Media, and Film Production Income Tax Credit (Amended July 1, 2013 as Act 89 SLH 2013)

GETTING STARTED

- 1. I am about to fly to Hawaii with some of my key crew to begin scouting and prepping. What should I do to start conducting official business in Hawaii?**

Contact the Hawaii Department of Commerce and Consumer Affairs (DCCA).

In general, all businesses entities (e.g., corporations, limited liability companies, partnerships, etc.) that are formed and organized under the laws of a jurisdiction other than Hawaii, should register to conduct business activities in Hawaii by applying for and receiving a Certificate of Authority from the Department of Commerce & Consumer Affairs (DCCA). Businesses that should register to do business while filming in Hawaii include out-of-state production companies, out-of-state loan-outs, and any other non-Hawaii business in Hawaii during a production.

For more information and for answers to any questions relating to obtaining a Certificate of Authority for foreign entities, please contact the Hawaii DCCA's Business Registration Division. The Business Registration Division can be contacted at the following numbers:

Telephone:

(808) 586-2744 (administration)
(808) 586-2727 (documents registration)

Fax:

(808) 586-2733

Residents on the neighbor islands may call the following numbers followed by 6-2727 and the # sign:

Kauai	274-3141
Maui	984-2400
Hawaii	974-4000
Lanai & Molokai	1-800-468-4644 (toll free)

You may register to do business in Hawaii AND secure a General Excise Tax License all at eHawaii.gov and the Business Express Online Business Registration—
<https://hbe.ehawaii.gov/BizEx/home.eb>

A note about General Excise Tax Registration with the Department of Taxation

In addition to the business registration requirement above, every person with business activities in Hawaii is required to apply for and obtain a general excise tax license. Persons conducting business activities in Hawaii are obligated to pay general excise taxes on the gross income from their business activities. There is a one-time \$20 General Excise Tax license fee.

Those required to register for a General Excise Tax license in the film industry include production companies or vendors seeking to do business with production companies that will have gross proceeds in Hawaii. Loan-outs, as separate businesses, must also obtain a General Excise Tax license.

The General Excise Tax license may be obtained with other business registration forms available through DCCA's Business Registration Division.

QUALIFIED PRODUCTION COSTS

2. Which production costs qualify?

The standard costs incurred during production, such as cast and crew wages (both Hawaii resident and non-resident, for the time the person is physically working in Hawaii); camera, grip, and lighting equipment rentals; lodging; transportation; location fees; airfare; etc.--as long as these costs are incurred in Hawaii and subject to our general excise or state income tax.

3. Do wages paid to non-residents (US Mainland or foreign countries) who work in Hawaii count as "qualified production costs"?

Yes. Because anyone who physically works in Hawaii is subject to Hawaii state income tax, wages paid to non-residents for work they do while in Hawaii does count as a "qualified production costs."

4. Are fees paid to loan-out corporations (for individual actors, directors, writers, etc.) considered "qualified production costs"?

Yes, but the loan-out corp. must first register to do business in Hawaii by one of the methods described in FAQ #1. The loan-out will need to obtain a Hawaii General Excise Tax License and pay general excise tax on gross proceeds earned in Hawaii because only production expenditures subject to Hawaii general excise or income tax are qualified for the tax credit.

5. Do per diem allowances (lodging, meals, incidentals) count as "qualified production costs" for claiming the credit?

Yes.

6. Are kit or box rentals from crew members considered "qualified production costs"? What if the kit rental is a special truck that comes with a California resident crew member who comes to work in Hawaii?

Kit rentals are typically considered "Miscellaneous Income" captured on 1099-MISC. Therefore, they are run through the "income tax engine" and do count as "qualified production costs" that are subject to Hawaii state income tax. If a California-based crew member, say, is renting a special truck to the production, he is considered an "independent contractor" doing business in Hawaii, and therefore must first register to do business in Hawaii by one of the methods described in FAQ #1. He will need to obtain a Hawaii General Excise Tax License and pay general excise tax on gross proceeds earned in Hawaii because only production expenditures subject to Hawaii general excise or income tax are qualified for the tax credit.

7. For roundtrip flights to and from Hawaii, can I claim the full roundtrip airfare amount, or only 50%? How about the roundtrip shipping cost to and from Hawaii for a piece of equipment?

You may claim the full roundtrip amount. Any fare or cost for a flight or shipment that touches down in or takes off from Hawaii is considered a "qualified production cost." Note that if the equipment was not bought or rented out of Hawaii, the cost of the equipment itself is not a "qualified production cost."

8. How are interisland flights treated?

Flights between Oahu and a neighbor island are pro-rated to account for the differential in tax credit amounts (20% on Oahu vs. 25% on neighbor islands). If, for example, a roundtrip flight between Oahu

and Maui costs \$100, then the 20% credit rate will apply to \$50 of the flight, and the 25% credit rate will apply to the other \$50 of the flight. That brings the total credit amount for this flight to $10+12.50 = \$22.50$. Flights between two neighbor islands are subject to the 25% tax credit rate. However, if Oahu is merely a brief flight stopover or transfer point between a non-Hawaii location and a neighbor island, then the 25% credit rate would apply to the entire flight.

- 9. Some members of my crew are flying from New York to Hawaii, with a stop-over in Los Angeles. The first leg of their flight is on Airline A, which *does not* have operations in Hawaii. The second leg of their flight is on Airline B, which *does* have operations in Hawaii. Are both legs of the flight considered “qualified production costs”?**

If both legs of the flight are part of a single ticket booked at one time through an airline or agent with Hawaii operations, then both legs of the flight are considered “qualified production costs.” If each leg was booked separately through two different vendors, then the NY to L.A. flight does not count as a qualified production cost, but the L.A. to Hawaii flight does.

- 10. I run a small commercial production company. If my company produces a commercial for a client, is the “production service fee” that I charge for my physical production services considered a “qualified production cost”?**

If you, rather than your client, are the filing entity claiming the tax credit, then your fee does not count as a qualified production cost, but rather as gross proceeds. However, if your client is the filing entity claiming the tax credit, your client may claim your “production service fee” as a “qualified production cost.” For example, if CLIENT hires PROD.CO. to produce a commercial, if CLIENT files for the tax credit, then CLIENT may claim the “production service fee” charged by PROD.CO because this is a cost to CLIENT. If, on the other hand, PROD.CO. files for the tax credit, then PROD.CO. may not claim the “production service fee” it charged CLIENT because it is not a cost to PROD.CO., but rather gross proceeds.

- 11. Is production insurance a “qualified production cost”?**

Production insurance purchased from a non-Hawaii based insurance company is *not* a “qualified production cost.” However, production insurance purchased from a Hawaii-based insurance company is. If a production company pays an annual premium to a Hawaii-based insurance company, this premium may be pro-rated and reasonably allocated to particular productions for the purpose of calculating tax credits.

- 12. Is general excise tax paid by the production company on vendor costs included in the sum of total Hawaii expenditures (and therefore included in calculating the credit amount)?**

Yes.

QUALIFIED PRODUCTIONS

- 13. I produce a Web-based drama series that is distributed only via the Internet. Can I claim the credit? What about a short film with Internet-only distribution?**

Yes, with the new amendments, effective July 1, 2013, Internet-only distributed productions now qualify for the credit.

14. What about a series or short film distributed over mobile phones, iPods, or other such electronic devices?

The series would not qualify because the only “series” that qualify for the credit are “television series” (broadcast over the television airwaves) and ad campaigns (“series” of advertising messages shot within 6 consecutive weeks). However, the short film would qualify as long as it is downloadable onto the device by a means other than just the Internet.

15. I’m shooting stock footage of various landscapes in Hawaii. Can I claim the credit?

No, stock footage is not a “qualified production.”

WORKFORCE DEVELOPMENT CONTRIBUTION

16. Is the “workforce development contribution” considered a “qualified production cost”?

No.

17. If I make my “workforce development contribution,” but then my tax credit application is later rejected, will I receive a refund of my contribution?

No, the workforce development contribution is non-refundable even if it turns out you do not qualify to claim the tax credit. Please note that this contribution is a mandatory, non-refundable pre-requisite to claiming the credit, and must be made prior to submitting your Hawaii Production Report.

18. My production has been donating our leftover craft service to the local homeless shelter. Can this count as our mandatory “workforce development contribution” to claim the credit?

While we encourage this kind of involvement with the community in which you shoot, the official workforce development contribution must be directly related to film and the arts, such as making a monetary or equipment donation to a public school’s arts program or developing a training session with a film labor union. You can find a full list of acceptable contributions in Appendix B of the Overview and Instructions packet for the tax credit.

TAX CREDIT APPLICATION PROCESS

19. If I finish shooting my film in March, can I apply to claim my credit immediately or do I have to wait till the end of my tax filing year?

In order to claim your credit, you must first submit your Hawaii Production Report to the Hawaii Film Office. You may do this at any time during the year, and the Film Office will process your Report and issue you a certification letter within 2 – 6 months of your submission. However, you must wait until the end of your company’s tax filing year (either calendar year or fiscal year) to file this certification letter with your corporate income tax return and tax credit claim form with the Hawaii Dept. of Taxation. The Dept. of Taxation will issue the credits in the form of a refund check or direct deposit after you have submitted these documents.

20. Can a foreign or U.S. Mainland company directly claim the tax credit?

Yes. Any non-Hawaii based company may claim the tax credit by doing the following: (1) Register to do business in Hawaii via one of the two methods described in FAQ #1; (2) File Production Registration Form before shooting, and Hawaii Production Report after shooting with the Hawaii Film Office; (3) File tax credit certification letter issued by Hawaii Film Office with corporate income tax return and tax credit claim form with the Hawaii Dept. of Taxation. Because the foreign company has no Hawaii income tax liability, the corporate income tax return would be an information-only return filed for the sole purpose of claiming the tax credit.

21. If there are 2 companies co-producing a project, can they both claim the tax credit?

No. Only a single company (or tax filing entity) per production may claim the tax credit. Any credit allocations among these companies must be determined separately outside of the tax credit claims process. We recommend that the companies pre-determine among themselves which entity will claim the credit. The Hawaii Film Office is not responsible for checking which entity is the rightful claimant and will process tax credit claims on a first-come, first-served basis.

22. My production company is hired by a client to shoot a commercial. Do I or my client get to claim the credit? What if I am not hired directly by the client, but through an ad agency? Which of us (originating client, ad agency, or my production company) gets to claim the credit?

Any one of the three entities may claim the credit, but only one entity may claim the credit for that production. Any credit allocations among these companies must be determined separately outside of the tax credit claims process. We recommend that the companies pre-determine among themselves which entity will claim the credit. The Hawaii Film Office is not responsible for checking which entity is the rightful claimant, and will process tax credit claims on a first-come, first-served basis. Also, per FAQ #10 above, please note that if the client files for the tax credit, then it may claim the “production service fee” charged by the production company as a “qualified production cost.” It may also claim any fees charged by a Hawaii-based ad agency. If the ad agency files for the credit, it may also claim the “production service fee” charged by the production company, but not its own agency fee charged to the client, as this is considered gross proceeds. If the production company files for the credit, it may not claim its own “production service fee” (either paid by the client or the ad agency) as a “qualified production cost.”

23. Should I file a Form N-340 for each production, or aggregate all productions on a single form?

Aggregate on a single form.

24. Should I file my tax credit claim for the year I committed the expenditures, or for the year I actually cut the checks to pay for the expenditure? For example, I completed production in December of 2012, but wrote some of the checks to pay for the production in January 2013.

You may either split your tax credit claim between 2012 and 2013 based on when you actually cut the checks, or you may claim all costs for 2012, depending on how your company does its accounting. However, if you split up the claim between 2012 and 2013, note that you will have to file a separate income tax return and tax credit claim for each year, and you will have to wait till early 2014 to receive your refund check for your 2013 claim.

25. The deadline for the Hawaii Production Report submission to the Hawaii Film Office is “90 days following the end of each taxable year in which qualified production costs were expended.” What does “taxable year” mean—is this my company’s fiscal tax filing year or the calendar year?

The “taxable year” refers to your company’s fiscal tax filing year, which may or may not coincide with the calendar year. For example, if your project shoots from February to July and your fiscal filing year ends on September 30th, your Hawaii Production Report deadline is 90 days after September 30th (which is December 29th).

26. What is the most critical tax filing deadline?

The filing entity MUST file its requisite Hawaii Income Tax forms on or before the 12th month following the close of the taxable year for which the credit may be claimed. Failure to comply with the 12-month filing requirement constitutes waiver of the right to claim the credit. The incumbent waiver of the credit due to an untimely claim is final. There are no appeal rights or other discretionary authority vested with the Department of Taxation to suspend or waive this provision. **(See Tax Information Release 2009-05; §18-235-17-04 (pp 19-20); Claiming the credit; timing; twelve month rule)**

OTHER

27. What is the general excise tax rate for loan-out services provided to production companies?

Where a vendor provides services to a production company (e.g., actors, writers, directors, and other common "loan-out" service-only activities), the vendor or loan-out company is subject to General Excise Tax at the rate of one-half of one percent on any gross proceeds (0.5%).

The 0.5 % rate applies to all service vendors that are providing services to a production company and the motion picture film product consists in part of the services provided. The lower 0.5% tax rate only applies to service-only vendors where their contribution to the production is identifiable in the final product. Services will be considered identifiable in the final product where the services lend expressive or creative contributions to the picture. (e.g., acting on screen, shooting the camera, writing, directing, etc.). Otherwise, all other vendors doing business with a production where the vendor's services are not identifiable in the final product are subject to the General Excise Tax at the ordinary 4% rate (4.5% on Oahu).

If you have questions regarding the General Excise Tax obligations of production companies or loan-out entities, please call the Department of Taxation directly at (808) 587-1577.

28. I have a very specific question that is not covered by these FAQs. How do I get an answer to it?

First, try calling the Hawaii Film Office at (808) 586-2570 or emailing incentives@hawaiifilmoffice.com. If you have detailed tax-related questions, you may try contacting the Department of Taxation's Rules Office at (808) 587-1577 or Tax.Rules.Office@hawaii.gov. If you would like a formal ruling on an issue (e.g., whether a specific production cost qualifies for the credit or not), you may use this form to request a ruling from the Department of Taxation: <http://www.state.hi.us/tax/2009/a7.pdf>

For other FAQs and example scenarios, please see the following Tax Information Releases:

Tax Information Release 2006-02: <http://www6.hawaii.gov/tax/tir/tir06-02.pdf>

Tax Information Release 2009-05: <http://www6.hawaii.gov/tax/tir/tir09-05.pdf>

Tax Information Release 2010-04: <http://www6.hawaii.gov/tax/tir/tir10-04.pdf>