STATE OF HAWAII—DEPARTMENT OF TAXATION

INSTRUCTIONS FOR FORM N-340
MOTION PICTURE, DIGITAL MEDIA, AND FILM PRODUCTION INCOME TAX CREDIT

GENERAL INSTRUCTIONS

PURPOSE OF FORM

Use Form N-340 to figure and claim the motion picture, digital media, and film production income tax credit under section 235-17, Hawaii Revised Statutes (HRS).

WHO MAY CLAIM THIS CREDIT

Each taxpayer subject to Hawaii's net income tax, who incurs qualified production costs in Hawaii for taxable years beginning after December 31, 2012 and before January 1, 2019, related to a qualified production, may claim a refundable motion picture, digital media, and film production income tax credit for the taxable year in which the credit is properly claimed.

FLOW-THROUGH ENTITIES

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified production costs incurred by the entity for the taxable year before January 1, 2019. The qualified production costs for which the tax credit is computed is determined at the entity level. The entity must complete Form N-340 and attach it to the entity's Hawaii income tax return. In addition, the entity must provide the appropriate Hawaii Schedule K-1 to each partner, member, shareholder, and beneficiary (member), to report the member's share of the qualified production costs relating to the credit. Each member shall separately take into account for its taxable year with or within which the entity's taxable year ends, the member's share of the qualified production costs and the resulting tax credit. A partner's share of the qualified production costs shall be determined in accordance with the ratio in which the partners divide the general profits of the partnership. The qualified production costs of the partnership which are subject to a special allocation that is recognized under IRC section 704(a) and (b) shall be recognized for the purposes of this tax credit. Each S corporation shareholder's qualified production costs is the shareholder's allocated share of the S corporation's qualified production costs. A beneficiary's share of the qualified production costs is allocated between the entity and the beneficiaries based on the income of the entity allocable to each beneficiary. The term "beneficiary" includes an heir, legatee, or devisee.

If a taxpayer is a member of a flow-through entity and the taxpayer claims a tax credit for the entity's qualified production costs, the taxpayer shall attach a copy of the applicable Schedule K-1 to Form N-340 when the tax credit is claimed.

WHEN THE CREDIT MAY NOT BE CLAIMED

The credit may not be claimed if any of the following apply:

1. You are claiming the Ethanol Facility Tax Credit for the same tax year.
2. If a deduction is taken under Internal Revenue Code (IRC) section 179 (with respect to an election to expense depreciable business assets), no tax credit shall be allowed for those qualified production costs incurred before January 1, 2019, for which the IRC section 179 deduction was taken;
3. Before January 1, 2019, no qualified production cost that has been financed by investments for which a credit was claimed by any taxpayer pursuant to section 235-110.9, Hawaii Revised Statutes (HRS), is eligible for the motion picture, digital media, and film production income tax credit.

HOW TO QUALIFY FOR THE CREDIT

The taxpayer must first obtain certification from the Hawaii Film Office of the Department of Business, Economic Development & Tourism (DBEDT). To qualify for the credit, the taxpayer must:

1. Prequalify the production for the tax credit by registering with DBEDT during the development or preproduction stage. (Note: Failure to comply with this provision can result in a waiver of the right to claim the credit.);
2. Complete DBEDT's Hawaii Production Report along with the required attachments and submit it to DBEDT within ninety days following the end of each taxable year in which qualified production costs were incurred (The written statement should identify (1) all qualified production costs, if any, in the previous taxable year, (2) the amount of motion picture, digital media, film production income tax credits claimed, if any, in the previous taxable year, and (3) the number of total hires versus the number of local hires by category and by county.); and
3. Obtain a credit certification letter from DBEDT specifying the qualified productions costs and the amount of tax credit for each tax year in which the credit is claimed. (The taxpayer for each qualified production shall file the letter with the taxpayer's tax return for the qualified production to the Department of Taxation.)

Notwithstanding the authority of DBEDT, the Director of Taxation may audit the tax credit amount to conform to the information filed by the taxpayer. For forms and additional Information about the certification process, please visit the Hawaii Film Office's website at **filmoffice.hawaii.gov** or contact them at (808) 586-2570 or by email at incentives@hawaiifilmoffice.com.

In general, to qualify for the credit, a production must:

1. Meet the definition of a qualified production (see "Definitions" below);
2. Have qualified production costs of at least $200,000;
3. Provide the State, at a minimum, a shared-card, end-title screen credit, where applicable;
4. Provide evidence of reasonable efforts to hire local talent and crew; and
5. 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.

CREDIT REQUIREMENTS

To claim this credit, you must complete and attach to your Hawaii income tax return:

1. Form N-340
2. Schedule CR (Not required for Form N-40)
3. Schedule K-1 (Required only if you are receiving this credit from a flow-through entity)

4. Credit certification letter from DBEDT.

The amount of the credit is:

- 20% of the qualified production costs incurred by a qualified production in any county of the State with a population of over 700,000 (i.e., City and County of Honolulu (Oahu)); and
- 25% of the qualified production costs incurred by a qualified production in any county of the State with a population of 700,000 or less (i.e., Counties of Kauai, Maui (Lanai, Maui, and Molokai), and Hawaii).

A qualified production occurring in more than one county may prorate its expenditures based upon the amounts spent in each county, if the population bases differ enough to change the percentage of tax credit. The total tax credits claimed per qualified production cannot exceed $15,000,000.

TAX CREDIT TO BE DEDUCTED FROM INCOME TAX LIABILITY, IF ANY; REFUNDS

If the tax credit exceeds the taxpayer's income tax liability, the excess of the tax credit over the liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credit shall be made for amounts less than $1.

DEADLINE FOR CLAIMING THE CREDIT

The deadline to claim the credit, including amended claims, is 12 months after the close of the taxable year. You cannot claim or amend the credit after the deadline.

HOW THE AMOUNT OF CREDIT ALLOWABLE AND CLAIMED IS ACCOUNTED FOR

The taxpayer shall treat the amount of credit available and claimed as taxable income for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income. The basis of eligible property for depreciation or accelerated cost recovery system (ACRS) purposes for State income taxes shall be reduced by the part of the tax credit related to qualified production costs incurred before January 1, 2019, that is allowable and claimed.

DEFINITIONS

For purposes of the motion picture, digital media, film production income tax credit:

"Commercial" (1) means an advertising message that is filmed using film, videotape, or digital media, for dissemination via television broadcast or theatrical distribution, (2) includes a series of advertising messages if all parts are produced at the same time over the course of six consecutive weeks, and (3) does not include an advertising message with Internet-only distribution.

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

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

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

"Qualified production" (1) means a production, with expenditures in the State, for the total or partial production of a feature-length motion picture, short film, made-for-television movie, commercial, 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 television series regularly filmed or based in the State, national magazine show, or national talk show, and (2) does not include: 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, and productions that include any material or performance prohibited by chapter 712, HRS.

"Qualified production costs" means the costs incurred by a qualified production within the State that are subject to the general excise tax under chapter 237, HRS, or income tax under chapter 235, HRS, and that have not been financed by any investments for which a credit was or will be claimed pursuant to section 235-110.9, HRS. Any government imposed fines, penalties, or interest that are incurred by a qualified production within the State shall not be "qualified production costs". Qualified production costs include but are not limited to:

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, including rentals and fees for use of state and county facilities and locations that are not subject to general excise tax under chapter 237, HRS, or income tax under chapter 235, HRS.
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;
10. Shipping of equipment and supplies to or from Hawaii, and interisland shipments; and
11. Other direct production costs specified by the department in consultation with DBEDT.

Refer to Tax Information Release (TIR) Nos. 2010-04, 2009-05, 2006-02, and Department of Taxation Announcement No. 2006-05 for more information. Copies of TIR Nos. 2010-04, 2009-05, 2006-02, Announcement No. 2006-05, and tax forms are available on the Department of Taxation's website at: **tax.hawaii.gov.**

SPECIFIC INSTRUCTIONS

Note for Form N-35, N-20, and N-40 filers: *The qualified production costs for which the tax credit is computed is determined at the entity level. Depending on the qualified production costs incurred by the S Corporation or partnership, stop at lines 5 and/or 12. Enter the qualified production costs on the applicable Schedule K, Form N-35 or Schedule K, Form N-20. Enter each shareholder or partner's share of the qualified production costs on the appropriate line of Schedule K-1, Form N-35 or Schedule K-1, Form N-20.*

For Form N-40 filers, depending on the qualified production costs incurred by the estate or trust, enter the allocable qualified production costs to the estate or trust on lines 5 and/or 12. Enter the distributive share of the qualified production costs to each beneficiary on Schedule K-1, Form N-40, line 9.

PART I – TAX CREDIT FOR QUALIFIED PRODUCTION COSTS INCURRED IN A COUNTY WITH A POPULATION OVER 700,000

Line 1 — Enter the total qualified production costs that have been certified by DBEDT and incurred in a county with a population of over 700,000 (i.e., City & County of Honolulu (Oahu)) during the taxable year.

Line 2 — Deduct the qualified production costs on line 1 for which a deduction was taken under IRC section 179.

Line 4 — Enter your share of qualified production costs incurred in a county with a population of over 700,000 (i.e., City & County of Honolulu (Oahu)) during the taxable year as reported to you by the entity (i.e., partnership, S Corporation, estate, or trust) on Schedule K-1.

Line 5 — See *Note for N-35, N-20, and N-40 filers.* Estates and trusts: The total qualified production costs qualifying for a **20%** credit on line 5 is to be allocated between the estate or trust and the beneficiaries in the proportion of the income allocable to each party. On the dotted line to the left of line 5, enter the qualified production costs allocable to the estate or trust with the designation "N-40 PORTION." Attach Form N-340 to the N-40 return and show the distributive share of the qualified production costs for each beneficiary.

Form N-35 filers, enter the amount on line 5 on Schedule K, line 16f. Form N-20 filers, enter the amount on line 5 on Schedule K, line 21. Form N-40 filers enter the distributive share amount on line 9 of Schedule K-1, Form N-40, for each beneficiary.

PART II – TAX CREDIT FOR QUALIFIED PRODUCTION COSTS INCURRED IN A COUNTY WITH A POPULATION OF 700,000 OR LESS

Line 8 — Enter the total qualified production costs that have been certified by DBEDT and incurred in a county with a population of 700,000 or less (i.e., Counties of Kauai, Maui (Lanai, Maui, and Molokai), and Hawaii).

Line 9 — Deduct the qualified production costs on line 8 for which a deduction was taken under IRC section 179.

Line 11 — Enter your share of qualified production costs incurred in a county with a population of 700,000 or less (i.e., Counties of Kauai, Maui (Lanai, Maui, and Molokai), and Hawaii) during the taxable year as reported to you by the entity (i.e, partnership, S Corporation, estate, or trust) on Schedule K-1.

Line 12 — See *Note for N-35, N-20, and N-40 filers.* Estates and trusts: The total qualified production costs qualifying for a **25%** credit on line 12 is to be allocated between the estate or trust and the beneficiaries in the proportion of the income allocable to each party. On the dotted line to the left of line 12, enter the qualified production costs allocable to the estate or trust with the designation "N-40 PORTION." Attach Form N-340 to the N-40 return and show the distributive share of the costs for each beneficiary.

Form N-35 filers, enter the amount on line 12 on Schedule K, line 16f. Form N-20 filers, enter the amount on line 12 on Schedule K, line 21. Form N-40 filers enter the distributive share amount on line 9 of Schedule K-1, Form N-40, for each beneficiary.

Line 15 — Enter the total motion picture, digital media, and film production income tax credit claimed for the year on this line, rounded to the nearest dollar, and on the appropriate line for the credit on Schedule CR or on Form N-40, Schedule F for the estate's or trust's share.