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TAX INFORMATION RELEASE NO. 2018-03

Re: Renewable Fuels Production Tax Credit, Hawaii Revised Statutes Section 235-110.31

The purpose of this Tax Information Release (TIR) is to define certain terms related to the Renewable Fuels Production Tax Credit (RFPTC) that are not defined in section 235-110.31, Hawaii Revised Statutes (HRS), and as applicable, Act 142, Session Laws of Hawaii 2017, and to provide the Department of Business, Economic Development, and Tourism (DBEDT) with guidance in regard to its verification and certification duties and administration of the \$3 million aggregate cap. This TIR, like the RFPTC, is effective for taxable years beginning after December 31, 2016.

1. For which tax years is the RFPTC available?

The RFPTC is effective for the “credit period,” which is defined in section 235-110.31(a), HRS, as a period of five consecutive years beginning with the first taxable year that a taxpayer claiming the RFPTC begins renewable fuels (RF) production at a level of at least 15 billion British thermal units (BTUs) per year. For example, if a taxpayer properly qualifies for the RFPTC for tax year 2017 for the first time, the RFPTC will be available for tax years 2017 through 2021.

2. What is the definition of the term “sold” for the purpose of the RFPTC?

Renewable Fuels are considered “sold” when the taxpayer claiming the RFPTC is able to substantiate that the specified quantity of the RFs produced were delivered to a purchaser with no affiliation to the taxpayer and that payment for the renewable fuels was made in full to the taxpayer claiming the RFPTC. In addition, both title and the risk of loss must be transferred to the purchaser for the sale to be complete.

For the purpose of verification and certification by DBEDT under section 235-110.31(c), HRS, DBEDT has the authority to determine whether the taxpayer has provided adequate substantiation to support RFPTC certification at its discretion. The Department of Taxation retains the authority to examine and adjust a RFPTC Credit Certificate (CC) after DBEDT certification.

3. What is the definition of “distribution” for the purpose of the RFPTC?

“Distribution” of RF under section 235-110.31, HRS, will be recognized when the RF being claimed for the RFPTC is transferred to an external and unrelated buyer from the taxpayer producing the RF and the taxpayer can provide official transportation manifest that substantiates the delivery of this RF to this buyer.

4. How should the \$3 million RFPTC aggregate cap be administered and applied?

The RFPTC has a \$3 million dollar cap to be administered by DBEDT, however, section 235-110.31(c), HRS, does not provide any instruction or guidance as to how it should be applied. Because there is no statutory guidance, DBEDT shall apply the aggregate cap on a first-come first-served basis.

In order to administer the aggregate cap on a first-come first-served basis, DBEDT will allocate the RFPTC based on the:

- Post mark date if the CC is mailed;
- Receipt date of the email transmitting the CC if submitted electronically; or
- Date stamp that DBEDT imprints upon receipt if the CC is hand-delivered.

To qualify for allocation, the CC must be fully complete; an incomplete CC will not receive an RFPTC allocation and must be resubmitted to DBEDT. If resubmission of a CC is required, the allocation priority will be based on the resubmission date, not the original submission date.

In the event that multiple taxpayers submit CCs with the same post mark date, email receipt date or DBEDT date stamp and the total RFPTC requested exceeds the \$3 million aggregate cap, DBEDT shall apply a proportional allocation between those taxpayers who have submitted their CCs on the same date based on the amount of RF production. The following examples illustrate this allocation:

Example 1: Taxpayers A, B and C, each submit CCs for RFPTC. Taxpayer A submits its CC one day before Taxpayers B and C, who both submitted on the same day. Taxpayer A submits a CC for \$1 million, Taxpayer B submits a CC for \$950,000, and Taxpayer C submits a CC for \$950,000, for a total of \$2.9 million for all three CCs. It is assumed that all calculations to derive the total RFPTC earned by each taxpayer in dollars is correct and adheres to the RFPTC requirements. Although Taxpayers B and C submit on the same day, no proration is required because after Taxpayer A is allocated \$1 million, \$2 million is left to allocate. Taxpayer B and C will each be allocated \$950,000 as requested. \$100,000 is left to allocate.

Example 2: Assume the same facts as in Example 1 except that Taxpayer B submits a CC for \$1,000,000, and Taxpayer C submits a CC for \$3 million. Since Taxpayer A has submitted first, it will be allocated the full \$1 million. After the allocation to Taxpayer A, only \$2 million of the aggregate cap is available for allocation between Taxpayers B and C. The allocation will be done proportionally to their respective total RF production amounts. Based on Taxpayer B's CC for \$1 million, Taxpayer B produced 380 billion BTUs and based on Taxpayer C's CC for \$3 million, Taxpayer C produced 1.14 trillion BTUs. Taxpayer B will be allocated \$500,000 or 25% of \$2 million (380 billion BTUs/(380 billion BTUs + 1.14 trillion BTUs)) and Taxpayer C will be allocated \$1.5 million in RFPTC or 75% of \$2 million (1.14 trillion BTUs/(380 billion BTUs + 1.14 trillion BTUs)).

5. What is the definition of “year” for the purpose of administering the \$3 million aggregate cap?

The term “year,” as used in section 235-110.31(c), HRS, means calendar year. The \$3 million aggregate cap applies from January 1 to December 31 for each year that the RFPTC is effective. It should be noted that the term “year” is not the same as the term “credit period” for the purpose of administering the RFPTC, as DBEDT will be able to certify the RFPTC up to one calendar year after the end of the “credit period.”

For example, if a taxpayer first qualifies for the RFPTC for tax year 2017, the RFPTC will be available through tax year 2021. This means that the “credit period” ends with tax year 2021. In this case, DBEDT may continue to certify the RFPTC until the aggregate cap of \$3 million for the January 1 to December 31, 2022 period is reached or December 31, 2022, whichever is later.

DBEDT shall apply and administer the aggregate cap accordingly. If the \$3 million aggregate cap is reached, DBEDT is to cease certifying the RFPTC and notify the Department of Taxation that the aggregate cap has been reached.

6. What is the applicable fuel specification for a fuel to qualify as a “renewable fuel” for the purpose of the RFPTC?

In pertinent part, the definition of “renewable fuels” in section 235-110.31(a) provides, “[t]he fuels meet the relevant ASTM International specifications for the particular fuel or other industry specifications for liquid or gaseous fuels.” Taxpayers may therefore qualify the fuels produced as a “renewable fuel” under either specification.

Taxpayers who seek to qualify the fuels as “renewable fuels” using the “other industry specifications for liquid or gaseous fuels” must use the industry specification that applies specifically to the type of fuel that was produced. For example, if biogas is produced, the “other industry specification” that can be applied must apply specifically to biogas.

DBEDT shall perform its verification and certification under section 235-110.31(c), HRS, in accordance with this TIR. For more information on this issue, please contact the Rules Office at 808-587-1530 or by e-mail at Tax.Rules.Office@hawaii.gov.

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HRS section explained: 235-110.31