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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2006-05

RE: Act 88, Session Laws of Hawaii 2006, Relating to Digital Media (Act 88)

On May 10, 2006, the Governor signed S.B. No. 2570, S.D.2, H.D.2, C.D.1 into law as Act 88, which provides a refundable tax credit for film and television productions. The purpose of Act 88 is to encourage the growth of the film industry by:

(1) providing enhanced incentives that attract more film and television productions to Hawaii, thereby generating tax revenues;

(2) providing jobs and income for residents;

(3) supporting tourism and the natural beauty of Hawaii; and

(4) enabling the state to compete effectively against other jurisdictions that offer similar incentives.

Act 88 contains a number of changes to section 235-17 of the Hawaii Revised Statutes (HRS) for the purposes of promoting the growth of the film industry in Hawaii. Specifically, the film tax credit is extended to "digital media". "Digital Media" is defined as "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 (excluding Internet-only distribution)". Section 235-17(2)(1), HRS.

The allowable amount of film tax credit is changed from up to 4% of the costs incurred in the production of motion picture or television films under the old law to 15% in any county of Hawaii with a population of over 700,000 (Oahu) and 20% in any county of Hawaii with a population of 700,000 or less (neighbor islands), of the "qualified production costs".[1] The

[1] "Qualified Production Costs" is defined as "the costs incurred by a qualified production within the state that are subject to the general excise tax under chapter 237 or income tax under this chapter and that have not been financed by any investments for which a credit was or will be claimed pursuant to section 235-110.9. 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; (7)

expenditures are on a pro-rata basis where applicable if a qualified production occurs in more than one county. The maximum amount of film tax credit that can be claimed is $8,000,000 per "qualified production".[2]

The tax credit for actual transient accommodations expenditures under the old law is repealed. To qualify for the tax credit, a production must be a "qualified production" as defined in section 235-17(l) of the HRS; the total qualified production costs must be at least $200,000; provide the state at a minimum, a shared-card, end-title screen credit, where applicable; provide evidence of reasonable efforts to hire local talent and crew; and provide evidence of financial, in-kind contributions, educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both in furtherance of the local film and television and digital media industries. On or after July 1, 2006, any qualified production cost that has been financed by investments where a tax credit was claimed by any taxpayer under section 235-110.9 of the HRS is not eligible for the film tax credit pursuant to Act 88.

A taxpayer must register with the Department of Business, Economic Development, and Tourism (DBEDT) during the development or pre-production stage for prequalification purposes. Failure to register may result in losing the right to claim the film tax credit under Act 88. Any taxpayer claiming a film tax credit for a qualified production under Act 88 must submit a written sworn statement to DBEDT no later than 90 days following the end of each taxable year in which qualified production costs were expended. The statement shall contain all qualified production costs incurred in the previous taxable year; the amount of film tax credits claimed in the previous taxable year; and the comparison of the number of total hires and the number of local hires by category, such as department, and by county. DBEDT must maintain records of the names of the taxpayers claiming the film tax credits for the qualified productions; obtain and compute the total aggregate amounts of all qualified production costs per qualified production and per qualified production per taxable year; and provide a letter to the Director of Taxation specifying the amount of film tax credit claimed per qualified production for each taxable year and the aggregate amount of the film tax credit claimed for all years.

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 the Department of Business, Economic Development, and Tourism". Section 235-17(2)(1), HRS.

[2] "Qualified Production" is defined as "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 twenty-two episodes) of a television series regularly filmed in the state (if the number of episodes per single season exceeds twenty-two, 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) [a qualified production] does not include: 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; and productions that include any material or performance prohibited by chapter 712". Section 235-17 (2)(l), HRS.

Upon each determination required for such credit, DBEDT will provide a letter to the taxpayer claiming the film tax credit for the qualified production. The letter will specify the qualified production costs and the amount of the tax credit that the taxpayer qualifies for in each taxable year in which a tax credit is claimed. In order for the taxpayer to claim the film tax credit for each qualified production, the taxpayer must file this letter with their tax return. The Department of Taxation may audit and adjust the film tax credit amount to conform to the information filed by the taxpayer notwithstanding the authority of DBEDT.

Act 88 takes effect on July 1, 2006 and is repealed on January 1, 2016. On January 1, 2016, section 235-17, HRS reverts to the language of the statute that existed before the Act 88 changes.

For further information regarding this announcement, please call the Rules Office at (808) 587-1577.

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