STATE OF HAWAII—DEPARTMENT OF TAXATION

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

CHANGES TO NOTE

Act 143, Session Laws of Hawaii (SLH) 2017, amends the qualifications a production must meet in order to claim the Motion Picture, Digital Media, and Film Production Income Tax Credit. This act also caps the amount of tax credit that may be claimed at $35,000,000 per year, extends the sunset date to January 1, 2026, and requires film productions claiming the tax credit to obtain a verification review of qualified production costs by a certified public accountant. The Act applies to taxable years beginning after December 31, 2018.

Act 275, SLH 2019, increases the cap on the amount of tax credit that may be claimed from $35,000,000 to $50,000,000 per year. The act applies to taxable years beginning after December 31, 2018.

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, 2026, 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, 2026. 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. 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, 2026, for which the IRC section 179 deduction was taken;
2. Before January 1, 2026, 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, HRS, is eligible for the motion picture, digital media, and film production income tax credit.

HOW TO QUALIFY FOR THE CREDIT

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

1. Meet the definition of a qualified production (see "Definitions" below);
2. Have qualified productions costs of at least $200,000;
3. Provide the State a qualified Hawaii promotion, which shall be at a minimum, a shared-card, end-title screen credit, where applicable;
4. Provide evidence of reasonable efforts to hire local talent and crew;
5. Provide evidence when making any claim for products or services acquired or rendered outside of this State that reasonable efforts were unsuccessful to secure and use comparable services within this State; and
6. 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.

PREQUALIFICATION PROCESS

Every taxpayer claiming the credit is required to prequalify for the credit by registering with the Hawaii Film Office of the Department of Business, Economic Development, and Tourism (Film Office). At least one week before principal photography begins, all taxpayers must submit a prequalification registration for each qualified production to the Hawaii film office that must include:

1. A proof of registration with State agencies to do business in the State;
2. A detailed synopsis of production, including a script if one exists; and
3. An estimated budget.

The Film Office will review each prequalification registration and issue a prequalification letter to each production that meets the Hawaii film office's requirements. Failure to timely submit a prequalification registration may result in waiver of the credit at the discretion of the Film Office.

CERTIFICATION PROCESS

Not later than 90 days following the end of the taxable year in which qualified production costs were incurred, all taxpayers must submit a production report to the Film Office, together with a verification review by a qualified certified public accountant using procedures prescribed by the Film Office, that must include:

1. A sworn statement identifying qualified production costs incurred during the taxable year;
2. Data on the production as prescribed by the Hawaii film office;
3. A detailed expenditure report with summary by department and category made on the form prescribed by the Hawaii film office;
4. Documentation that the shared-card, end title screen credit requirement has been met;
5. A vendor list, crew list, and confirmation of efforts to hire local talent and crew;
6. Confirmation of education or workforce development contributions; and
7. Verification of compliance to provide every nonresident employee, contractor, vendor, loan-out company, or other agent providing goods or performing services in the State with a tax advisory informing such persons of State tax obligations and obtain acknowledgement that the advisory was received. The tax advisory must be provided to all such persons not later than thirty business days after engaging the nonresident employee, contractor, vendor, loan-out company, or other agent.

The Film Office will not certify any production costs for which the detailed expenditure report is incomplete. The Film Office will issue a letter to the taxpayer certifying the amount of qualified production costs. In order to properly claim the credit, the taxpayer must attach a copy of the certificate to the taxpayer's income tax return, along with any other required forms.

Notwithstanding the authority of the Film Office, 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 Film Office's website at filmoffice.hawaii.gov or contact them at (808) 586-2570 or by e-mail at incentives@hawaiifilmoffice.com.

CREDIT REQUIREMENTS

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

1. Form N-340
2. Schedule CR (For tax returns for which Schedule CR is required.)
3. Schedule K-1 (Required only if you are receiving this credit from a flow-through entity)
4. Credit certification letter from Film Office

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. The total amount of tax credits allowed for all taxpayers is $50 million in any taxable year beginning after December 31, 2018. If the total amount of credits applied for in any year exceeds $50 million, the excess shall be treated as having been applied for in the subsequent year and shall be claimed in such year provided that no excess shall be allowed to be claimed after December 31, 2025.

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. This includes any claims by a partner, member, shareholder, or beneficiary. 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, 2026, 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 Film Office.

Refer to Tax Information Release (TIR) Nos. 2019-01, 2018-04, 2010-04, 2009-05, 2006-02, and Department of Taxation Announcement No. 2006-05 for more information. Copies of the TIRs and of the Announcement 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 for the taxable year by Film Office and incurred in a county with a population of over 700,000 (i.e., City & County of Honolulu (Oahu)).

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)) for 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 for the taxable year by Film Office 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) for 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.