HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 235

INCOME TAX LAW
RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT

RENEWABLE ENERGY TECHNOLOGIES; INCOME TAX CREDIT

§18-235-12.5-01 Definitions. (a) As used in section 235-12.5, HRS, and sections 18-235-12.5-01 through 18-235-12.5-05:

(1) "Actual cost" means the amounts incurred or paid for renewable energy technology systems under section 235-12.5(a), HRS, including peripheral equipment ordinarily and necessarily required for system operation and installation. Actual cost shall not include any consumer incentive payments or premiums offered with the system, regardless of when such payment or premium is made to the customer, and shall not include any amount for which another credit is claimed under chapter 235, HRS. Any amounts incurred or paid for the repair, construction, or reconstruction of a structure or building in conjunction with the installation and placing in service of a solar or wind energy system shall not constitute a part of actual cost for the purposes of section 235-12.5, HRS.

(2) "Commercial property" means a property which cannot be properly characterized as residential or mixed-use property. A hotel, or any other place in which lodgings are regularly furnished to transients for consideration, in which all of the rooms, apartments, suites, or the like are occupied by a transient for less than one hundred eighty consecutive days for each letting will be considered commercial property to the extent of that use.

(3) "Installed and placed in service" means that the system is ready and available for its specific use. With respect to systems

installed for residential property, all requirements will be completed and a system will be deemed to be installed and placed in service when: (1) The actual cost has been incurred; (2) all installation, including all related electrical work, has been completed; and (3) any required requests for inspection of the installation has been received by the appropriate government agency. However, if the residential installation fails to pass all the required inspections the credit is properly claimed in the taxable year in which the system passes such inspection.

(4) "Mixed-use property" means a property on which at least one residence exists and commercial activity takes place.

(5) "Multi-family residential property" means a property on which more than one residence is located. The determination that property is multi-family residential property is fact specific, but in general and in the absence of other relevant facts to the contrary, multi-family residential property will be real property that is described in a recorded title and that has more than one mailing address or separate entrances to separate living areas. The following exceptions may apply:

(A) The Ohana House Exception: If a single property has two separate residences, each occupied by members of a family as defined in the Internal Revenue Code, section 267(b)(1), then each residence will be considered a separate single-family residential property if the system services both residences. Partners in a civil union will also be considered members of a family for the purpose of this exception; or

(B) The Directed Use Exception: If a system only services one residence on a multi-family residential property, then the system will be treated as servicing a single-family residential property.

(6) “Property” means a single, definable portion of real property located in the State as described in a title recorded with the Bureau of Conveyances or Land Court of the state of Hawaii and that the applicable law allows to be sold in fee simple separately from any other real property located in the State. For purposes of the Renewable Energy Technologies Income Tax Credit under section 235-12.5, HRS, all such titled property in the State is to be characterized as commercial, residential, or a mix of the two (mixed-use). When special circumstances exist, the department, at its discretion, may determine whether an interest qualifies as a "property" for the purposes of the credit on a case-by-case basis.

(7) “Renewable energy technology system” means a new system that captures and converts a renewable source of energy, such as solar or wind energy, into a usable source of thermal or mechanical energy, electricity, or fuel.

(8) “Residence” means dwelling place or place of habitation, an abode.

(9) “Single-family residential property” means a property on which one residence is located.

(10) “Standard Test Conditions” means 25 degrees Celsius cell/module temperature, 1,000 watts per square meter (W/m^2) irradiance, air mass 1.5(AM 1.5) spectrum.

(11) “Total output capacity” means the combined individual output capacities (maximum power) of all identifiable facilities, equipment, apparatus or the like that make up the renewable energy technology system installed and placed in service during a taxable year

measured in kilowatts. The total output capacity of a solar energy system shall be calculated using the manufacturer's published specifications of the components of the solar energy system. Generally, for photovoltaic solar energy systems, total output capacity is the output capacity (maximum power) of each cell, module or panel at Standard Test Conditions in kilowatts multiplied by the number of cells, modules or panels installed and placed into service during a taxable year. The amount of energy actually produced is not relevant to calculating total output capacity. [Eff 1/02/14] (Auth: HRS §§231-3(9), 235-12.5, 235-118) (Imp: HRS §235-12.5)

§18-235-12.5-02 [Reserved]

§18-235-12.5-03 Other Solar Energy Systems. (a) "Solar energy system" means any identifiable facility, equipment, apparatus, or the like that converts solar energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation. Unless subsection (b) applies, each solar energy system installed and placed in service on or after January 1, 2013 shall have a total output capacity at Standard Test Conditions as follows:

(1) Single-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(A), HRS, each system for which a credit is claimed shall have a total output capacity of at least 5 kilowatts.

(2) Multi-family residential property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(B), HRS, each system for

which a credit is claimed shall have a total output capacity of at least 0.360 kilowatts per unit per system.

(3) Commercial property: For credits calculated under section 235-12.5(a)(1), HRS, and capped under section 235-12.5(b)(2)(C), HRS, each system for which a credit is claimed shall have a total output capacity of at least 1,000 kilowatts.

Example 1: Taxpayer installs and places into service solar energy equipment including 20 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 5 kilowatts (0.250 kilowatts times 20 photovoltaic panels). One system has been installed and placed into service for the purpose of calculating the credit. The actual cost of the system may not be divided in order to claim multiple credits because the solar energy system only meets the total output capacity requirement for one system.

Example 2: Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.180 kilowatts on a multi-family residential property. The installation has a total output capacity of 7.2 kilowatts (0.180 kilowatts times 40 photovoltaic panels). If the installation serves 20 units, the total output capacity for each system must be at least 7.2 kilowatts (0.360 kilowatts times 20 units). One system has been installed and placed into service for the purpose of calculating the credit.

Example 3: Taxpayer installs and places into service solar energy equipment including

4,000 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a commercial property. The installation has a total output capacity of 1,000 kilowatts (0.250 kilowatts times 4,000 photovoltaic panels). Since each system must have a total output capacity of at least 1,000 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

Example 4: Taxpayer installs and places into service solar energy equipment including 40 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 10 kilowatts (0.250 kilowatts times 40 photovoltaic panels). Since each system must have a total output capacity of at least 5 kilowatts, two systems have been installed and placed into service for the purpose of calculating the credit.

Example 5: During March of a taxable year, Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. During August of the same taxable year, Taxpayer installs and places into service additional equipment including 10 photovoltaic panels, each of which also has an output capacity (maximum power) of 0.250 kilowatts on the same the single-family residential property. The total output capacity of both installations is 5 kilowatts [(0.250 kilowatts times 10 photovoltaic panels)+ (0.250 kilowatts times 10 photovoltaic panels)] because the output capacity of both installations must be combined. Since each system must have a total

output capacity of at least 5 kilowatts, one system has been installed and placed into service for the purpose of calculating the credit.

(b) The credit may be claimed for one solar energy system installed and placed in service per property which fails to meet the applicable total output capacity requirement as set forth in subsections (a)(1) through (a)(3), where:

(1) Only one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property; or

(2) More than one solar energy system, for the purposes of the credit, has been installed and placed in service during a taxable year on a single property and one of the systems fails to meet the applicable total output capacity requirement.

Example 6: Taxpayer installs and places into service solar energy equipment including 10 photovoltaic panels, each of which has an output capacity (maximum power) of 0.250 kilowatts on a single-family residential property. The installation has a total output capacity of 2.5 kilowatts (0.250 kilowatts times 10 photovoltaic panels). Although the system does not meet the total output capacity requirement, subsection (b)(1) permits the claiming of the credit because only one system has been installed and placed into service on one property.

Example 7: Taxpayer installs and places into service solar energy equipment on a single-family residential property which has a total output capacity of 7.5 kilowatts and an actual cost of $37,500. In order to calculate the credit, the actual cost per kilowatt must be determined by dividing the actual cost by the total output capacity. The actual cost per

kilowatt is $5,000 ($37,500 divided by 7.5 kilowatts). Since a system installed and placed in service on a single-family residential property must have a total output capacity of at least 5 kilowatts, the actual cost of the first system is $25,000 ($5,000 times 5 kilowatts). The credit for the first system is $5,000 because thirty-five percent of $25,000 exceeds the applicable cap of $5,000. A credit for the second system may also be claimed because subsection (b)(2) permits taxpayers to claim the credit for one system per property that fails to meet the total output capacity requirement. The actual cost of the second system is $12,500 ($5,000 times 2.5 kilowatts). The credit for the second system is $4,375 or thirty-five percent of $12,500. [Eff 1/02/14] (Auth: HRS §§231-3(9), 235-12.5, 235-118) (Imp: HRS §235-12.5)

§18-235-12.5-04 [Reserved]

§18-235-12.5-05 Multiple Properties and Mixed-use Property. (a) Property will be considered residential or mixed-use if any portion of the property is being used as a residence. If at the time of installation and placing in service of the system the property is not occupied, then property will be considered residential or mixed-use if any portion of the property is intended for use as a residence.

(b) Allocation. Where a single system is installed and placed in service to serve more than one property or to service a mixed-use property the taxpayer shall apply a reasonable allocation method such as square footage or a measure of use as follows:

(1) For a system installed and placed in service to serve more than one property, the actual cost of a single system servicing multiple properties is allocated among the properties. The actual cost of other solar

energy systems shall be allocated in a manner consistent with section 18-235-12.5-03. With multiple properties, the appropriate cap is applied for each separate property.

Example 1: Assume Taxpayer installs and places into service a wind farm that services one community of 50 single-family homes and 10 separate commercial properties. Each property is equal in size and use, the allocation of the actual cost would be made equally to each property. Further assume that a $600,000 wind-powered system were installed and placed in service for these properties, the credit would be calculated as follows: Allocation of cost: The actual cost of $600,000 would be divided equally among the properties, allocating $10,000 to each property. Single-family residential: Each single-family residential property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $1,500 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $1,500 credit, for a total of $75,000 (50 properties times $1,500). Commercial: Each commercial property would be treated independently. In each case, twenty percent of $10,000, or $2,000, would be compared against the $500,000 commercial property cap. Under the facts of this example, each commercial property would generate a $2,000 credit, for a total of $20,000 (10 properties times $2,000). The total credit for the $600,000 wind-powered system is $1,500 for each single-family residential property ($75,000) plus $2,000 for each commercial property ($20,000) for a total credit of $95,000.

Example 2: Taxpayer, an independent energy provider installs and places into service a wind farm that does not service any particular property, but is entirely directed into the energy grid of the local electricity provider. The renewable energy technology system will be considered to be servicing commercial property only; no allocation is necessary. However, if an identifiable connection exists to customers situated on the property where the power is produced in addition to a connection to the energy grid of the local electricity provider, then the cost of the system must be allocated among and between the particular property or properties being serviced and the connection to the energy grid, which is treated as servicing a single commercial property.

Example 3: Taxpayer installs and places into service solar energy equipment for a condominium that contains both residential and commercial units. Each condominium unit has a separate title, so each unit would be treated as a separate property. The taxpayer must reasonably allocate the actual cost of the system between the residential and commercial properties. The condominium contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit is calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since there are 60 separate units that have equal energy use, the actual cost of a 1 kilowatt portion of the installation must be allocated to each unit. Thus, actual cost of $600,000 would be divided equally among the 60 properties, allocating $10,000 to each property. Single-family residential: Although each system does not meet the total output capacity requirement,

subsection 18-235-12.5-03(b)(1) allows a credit to be claimed for each system because only one system has installed and placed into service on each property. Each single-family residential condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $5,000 single-family residential property cap. Under the facts of this example, each single-family residential property would generate a $3,500 credit, for a total of $175,000 (50 units times $3,500). Commercial: Each commercial condo unit would be treated independently. In each case, thirty-five percent of $10,000, or $3,500, would be compared against the $500,000 commercial property cap. Each commercial property would generate a $3,500 credit, for a total of $35,000 (10 properties times $3,500). The total credit for the $600,000 photovoltaic energy system is $3,500 for each single-family condo unit ($175,000) plus $3,500 for each commercial condo unit ($35,000) for a total credit of $210,000.

(2) For a system installed and placed in service to service a mixed-use property, the actual cost of the system is allocated between the residential use (which may be single-family use or multiple-family use) and the commercial use. For a photovoltaic energy system, thirty-five percent of the cost allocated to residential use is compared against either the single-family residential cap or the multiple-family residential cap; and thirty-five percent of the cost allocated to commercial use is compared against the commercial property cap.

Example 4: Taxpayer is a farmer and has a dwelling and barn on one of the lots which is considered to be a mixed-use property. Taxpayer installs and places into service a renewable

energy technology system that only services the barn. Allocation by use results in the system being subject only to the commercial property limitations. (Note: This is not an example of the directed use exception; an allocation would still be made, but it would be a 0% residential/100% commercial allocation based upon use.)

Example 5: Same facts as Example 4, but the system services both the barn and the dwelling. A portion of the system's actual cost would be subject to the commercial property limitations and the rest would be subject to the single-family residential property limitations.

Example 6: Taxpayer installs and places into service renewable energy technology equipment for an apartment complex that contains both residential and commercial units. Each unit is not separately titled, so each unit would not be treated as separate property. Instead, the titled property is the entire apartment complex. Since the titled property is mixed-use, the taxpayer will have to reasonably allocate the actual cost of the system between the residential and commercial uses of the property. The complex contains 50 single-family units and 10 commercial units of equal size and use, and a $600,000 photovoltaic energy system that has a total output capacity of 60 kilowatts. The credit would be calculated as follows: Allocation of cost: The actual cost per kilowatt is $10,000 ($600,000 divided by 60 kilowatts). Since each of the units has an equal energy use, the actual cost of $600,000 would be divided between residential use of the property and the commercial use of the property, allocating $500,000 ($10,000 times 50 units) to the residential use and $100,000 ($10,000 times 10 units) to the commercial use. Residential Use:

Since the property contains more than one residence, the proper characterization of this use is multi-family residential. Because the installation serves 50 residential units, the total output capacity of each system must be at least 18 kilowatts (0.360 kilowatts times 50 units). The total output capacity of the residential portion of the installation is 50 kilowatts. For the purpose of calculating the credit, two systems that meet the total output capacity requirement and one system that fails to meet the requirement have been installed and placed into service. The actual cost for each of the two systems which meet the 18 kilowatt total output capacity requirement is $180,000 ($10,000 times 18 kilowatts) each. Thirty-five percent of $180,000, or $63,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). Because the credit is capped at $17,500 per system, the total credit for the two systems that meet the total output capacity requirement is $35,000 ($17,500 plus $17,500). The third system has an actual cost of $140,000 ($10,000 times 14 kilowatts). Although the system does not meet the total output capacity requirement the credit may be claimed under subsection 18-235-12.5-03(b)(2). Thirty-five percent of $140,000, or $49,000, would be compared against the multi-family residential property cap, or $17,500 ($350 times 50 units). The credit for the third system is $17,500 due to the cap. The total credit for the three systems serving the multi-family residential portion of the property is $52,500 ($17,500 times 3 systems). Commercial Use: Each system serving commercial property must have a total output capacity of at least 1,000 kilowatts. The total output capacity of the installation serving the commercial portion of the property is 10 kilowatts and the actual cost is $100,000 ($10,000 times 10 kilowatts). Since

the portion of the installation serving commercial property fails to meet the total output capacity requirement and the credit is already claimed for a system that does not meet the applicable total output capacity requirement on a single property, a credit may not be claimed for the installation that serves the commercial portion of the property. The total credit for the entire $600,000 solar energy installation is $52,500. Note: A credit for the commercial part of the installation may have been claimed if the credit for the third multi-family residential system had not been claimed. [Eff 1/02/14] (Auth: HRS §§231-3(9), 235-12.5, 235-118) (Imp: HRS §235-12.5)

§18-235-12.5-06 Application of sections 18-235-12.5-01 through 18-235-12.5-05. Sections 18-235-12.5-01 through 18-235-12.5-05 shall apply to renewable energy technology systems that are installed and placed in service on or after January 1, 2013. To the extent that sections 18-235-12.5-01 through 18-235-12.5-05 conflict with guidance issued by the department prior to January 1, 2013, these sections shall prevail. [Eff 1/02/14] (Auth: HRS §§231-3(9), 235-12.5, 235-118) (Imp: HRS §235-12.5)