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TAX INFORMATION RELEASE NO. 2019-01 (Revised)

Re: Proposed Administrative Rules Relating to the Motion Picture, Digital Media, and Film Production Income Tax Credit as amended by Act 143, Session Laws of Hawaii 2017

On April 10, 2018, the Department of Taxation (Department) issued Tax Information Release (TIR) 2018-04 which made the temporary administrative rules effective until December 31, 2018. The purpose of this TIR is to provide advanced notice of the proposed administrative rules relating to the Motion Picture, Digital Media, and Film Production Income Tax Credit (film credit) under Hawaii Revised Statutes (HRS) section 235-17 as amended by Act 143, Session Laws of Hawaii 2017 (Act 143). This TIR and the attached proposed administrative rules are effective from January 1, 2019 until the effective date of the administrative rules adopted in final form.

Act 143 was signed into law on July 10, 2017, is effective on December 31, 2018, and generally applies to taxable years beginning after December 31, 2018.

The Department has worked with DBEDT on developing proposed administrative rules that are consistent with Act 143. The Department will be accepting public testimony regarding the proposed administrative rules through the formal rulemaking process, however, testimony may be submitted to the Rules Office before the formal process begins.

For more information, please contact the Rules Office at (808) 587-1530 or by e-mail at Tax.Rules.Office@hawaii.gov.

LINDA CHU TAKAYAMA
Director of Taxation

Sections affected: HRS § 235-17

DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,
Hawaii Administrative Rules

SUMMARY

1. New §§ 18-235-17-01, 18-235-17-02, 18-235-17-03, 18-235-17-04, 18-235-17-05, 18-235-17-06, 18-235-17-07, 18-235-17-08, 18-235-17-09, 18-235-17-10, 18-235-17-11, 18-235-17-12, 18-235-17-13, 18-235-17-14, 18-235-17-15, 18-235-17-16, 18-235-17-17, 18-235-17-18, 18-235-17-19, 18-235-17-20, and 18-235-17-21 are added.

§18-235-17-01 Definitions. For purposes of sections 18-235-17-01 through 18-235-17-21:

"Aggregate cap" means the total amount of credits that may be claimed by all taxpayers claiming the credit in a particular year. The aggregate cap is \$35,000,000 and applies to taxable years beginning after December 31, 2018.

"Application year" means the tax year for which a timely production report is filed.

"Hawaii film office" means the office within the department of business, economic development, and tourism that is responsible for the administration of the department of business, economic, development, and tourism's duties and responsibilities under section 235-17, HRS.

"Loan-out company" or "loan-out" means a wholly-owned entity formed on behalf of an actor, performer, director, producer, or other "above the line" cast or crewmember of a qualified production, which serves as a separate entity that constitutes the individual's means of contracting with a qualified production for services rendered by the "above the line" cast or crew member. A loan-out company may employ more than one person.

"Production report" means the same as described in section 18-235-17-03(b).

"Qualified certified public accountant" means a certified public accountant licensed to provide accounting services in the state of Hawaii that does not have an ownership or pecuniary interest in the taxpayer.

"Timely production report" means a production report that has been physically received by the Hawaii film office or is deemed "filed and received" under section 231-8, HRS, after the end of the taxable year and on or before ninety days from the end of the taxable year. A production report received before the end of the taxable year shall be deemed to have been received on the first day following the end of the taxable year.

"Verification review" means an agreed upon procedures report prepared by a qualified certified public accountant. The agreed upon procedures report shall evaluate the taxpayer's assertion of the amount qualifying as qualified production costs within the meaning of section 235-17, HRS, for the taxable year. The report shall test compliance with the elements set forth in section 235-17, HRS, and any relevant administrative rules or administrative guidance issued by the department and Hawaii film office, and shall separately state the total of qualified production costs for which no exceptions were noted. Payments to non-employees must include general excise tax licenses of the non-employees in order to qualify as production costs under

section 235-17, HRS. General excise tax license may be verified using department of taxation tax license search. Qualified production costs subject to use tax under section 235-17-14 must have substantiation that use tax is actually paid. This report shall comply with the Standards for Consulting Services established by the American Institute of Certified Public Accountants, also known as AICPA. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-02 Motion picture, digital media, and film production income tax credit; allowed. (a) Beginning July 1, 2013, section 235-17, HRS, allows qualified taxpayers to claim a refundable income tax credit equal to the following percentages of qualified costs incurred for qualified productions being produced in the State:

- (1) Twenty per cent of qualified production costs incurred in any county in the State with a population of over seven hundred thousand (i.e., as of the date this rule became effective, the city and county of Honolulu); and
- (2) Twenty-five per cent of qualified production costs incurred in any county in the State with a population of seven hundred thousand or less (i.e., as of the date this rule became effective, Kauai, Maui, and Hawaii counties).

(b) In order to qualify for the credit under section 235-17, HRS, a qualified production must be considered a taxpayer for purposes of chapter 235, HRS. Any qualified production that conducts business activities in the State such that the qualified production is considered a taxpayer for purposes of chapter 235, HRS, is eligible to claim the credit under section 235-17, HRS. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-03 Claim for credit; procedures; production reports; multiple entities involved. (a) Every taxpayer claiming the credit under section 235-17, HRS, is required to prequalify for the credit by registering with the Hawaii film office. At least one week before principal photography begins, all taxpayers must submit a request for prequalification registration for each qualified production to the Hawaii film office. The request must include:

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

The Hawaii film office will review each request for prequalification registration and issue a letter to each production that meets the Hawaii film office's requirements notifying the production that it has successfully prequalified under section 235-17(f), HRS. Failure to timely submit a request for prequalification registration may result in waiver of the credit at the discretion of the Hawaii film office.

(b) Not later than ninety days following the end of the taxable year in which qualified production costs were incurred, all taxpayers must submit a production report to the Hawaii film office. The production report 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 as described in section 18-235-17-17;
- (5) A vendor list, crew list, and confirmation of efforts to hire local talent and crew as described in section 18-235-17-18;
- (6) Confirmation of education or workforce development contributions as described in section 18-235-17-19;
- (7) Verification of compliance with section 18-235-17-20(a); and
- (8) A verification review.

(c) The Hawaii film office shall not certify any production costs for which the production report is incomplete. In certifying the production costs, the Hawaii film office may require any taxpayer to provide substantiation for any

production costs.

(d) The Hawaii film office shall issue a certificate to the taxpayer certifying the amount of qualified production costs and the amount of credit the taxpayer may claim for the tax year as determined by section 18-237-17-04. 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.

(e) If a taxpayer produces more than one qualified production in a taxable year, the Hawaii film office will issue a separate certificate for each qualified production. In order to properly claim the credit, the taxpayer must attach a copy of each of the certificates received from the Hawaii film office to the taxpayer's return. Qualified production costs must be aggregated for purposes of claims for credit, which must also be aggregated on a single tax return for the taxable year.

(f) It is not uncommon in the motion picture and film production industry for multiple taxpayers to participate in one qualified production. The Hawaii film office shall issue a certificate to one taxpayer per qualified production for the initial claim of the credit under section 235-17, HRS. The initial claim of the credit may only be made by one taxpayer per qualified production.

(g) The \$15,000,000 cap is applied per qualified production, not per taxpayer. If a taxpayer produces multiple qualified productions in one taxable year, that taxpayer may receive total credit at the end of the taxable year in excess of \$15,000,000.

(h) Claims for credit under section 235-17, HRS, must correspond with the taxpayer's accounting method. In general, a cash method taxpayer must claim all qualified production costs in the year in which the cost was paid as provided in section 461 of the Internal Revenue Code of 1986, as amended; provided that costs that remain unpaid at the time the production report is submitted to the Hawaii film office are not qualified production costs. Any unpaid costs at the time the production report is submitted will not be considered incurred. An accrual method taxpayer must claim all qualified production costs in the year in which the cost was properly incurred under section 461 of the Internal Revenue Code of 1986, as amended.

(i) Subsection (h), relating to the claiming of qualified production costs in the year the costs are properly accounted for based upon a taxpayer's accounting method, is not intended to conflict with the definitional requirement of a qualified production contained in section 18-235-17-07. A taxpayer must independently satisfy the \$200,000 qualified production cost

definitional requirement in order to qualify for the tax credit under section 235-17, HRS. For additional discussion on the definition requirement of a qualified production, see section 18-235-17-07. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-04 Claim for credit; aggregate cap; allocation of credit. (a) The aggregate cap applies to taxable years beginning after December 31, 2018. If the total amount of credits applied for in any particular year exceeds the aggregate cap, 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.

(b) The Hawaii film office shall only allocate credits to taxpayers who have submitted a timely production report as required under section 235-17(h), HRS. Failure to submit a production report in a timely manner shall constitute a waiver of the credit for the qualified production costs reported on that production report.

Example 1:

XYZ Productions is a calendar year taxpayer and submits its production report to the Hawaii film office on May 1, 2020. For a calendar year taxpayer, the production report was due on March 30, 2020. Because a timely production report was not submitted, XYZ Productions has waived its right to the credit for the qualified production costs reported on that production report.

(c) For purposes of applying the aggregate cap and allocating the credit, the Hawaii film office shall consider the year's claims for credits to be the total amount of credits applied for in timely production reports received by the Hawaii film office from April 1 of that year to March 31 of the following year; provided that credits applied for in production reports that cover tax years beginning before January 1, 2019 shall not be counted against the aggregate cap for any year.

Example 1:

Taxpayer A is a calendar year taxpayer that applied for \$8,000,000 of credit based on qualified production costs incurred during the period beginning on January 1, 2019 and ending on December 31, 2019. Taxpayer B is a fiscal year taxpayer that applied for \$10,000,000 of credit based on qualified production costs incurred during the taxable year beginning February 1, 2019 and ending on January 31, 2020. Taxpayer A's production report is due on March 30, 2020 and Taxpayer B's production report is due on April 30, 2020. If the Hawaii film office receives

Taxpayer A and B's production reports on March 30, 2020 and April 30, 2020 respectively, Taxpayer A's credit will be allocated from the 2019 aggregate cap and Taxpayer B's credit will be allocated from the 2020 aggregate cap.

Example 2:

Assume the same facts as Example 1, except that the Hawaii film office receives Taxpayer B's production report on March 1, 2020. Taxpayer B's credits will be allocated from the 2019 aggregate cap because the timely production report was received by the Hawaii film office before March 31, 2020.

(d) If the total amount of credits applied for in any year exceeds the aggregate cap, the credit shall be allocated to taxpayers who have submitted a timely production report to the Hawaii film office on a prorated basis.

The formula used to allocate credits for the application year shall be the amount of credit that a taxpayer has applied for divided by the total amount of credits applied for by all taxpayers multiplied by the aggregate cap.

Taxpayers who were not allocated the full amount of credit for the application year due to the aggregate cap shall have priority in the subsequent year. Credits shall first be allocated to these taxpayers on a prorated basis. Any unallocated credits shall be allocated using the application year formula above.

Example 1:

Taxpayers A, B, C, and D are all calendar year taxpayers. Each taxpayer submits a timely production report to the Hawaii film office before March 31, 2020. Taxpayers A, B, C, and D applied for \$14,000,000, \$12,000,000, \$10,000,000, and \$4,000,000 of credits respectively.

The credits allocated to Taxpayers A, B, C, and D for tax year 2019 (application year) are as follows:

$$\begin{array}{r} \text{Taxpayer A} = \frac{\$14,000,000}{\$40,000,000} \times \$35,000,000 \\ = \$12,250,000 \\ \\ \underline{\$12,000,000} \end{array}$$

$$\begin{aligned} \text{Taxpayer B} &= \$40,000,000 \times \$35,000,000 \\ &= \$10,500,000 \end{aligned}$$

$$\begin{aligned} \text{Taxpayer C} &= \frac{\$10,000,000}{\$40,000,000} \times \$35,000,000 \\ &= \$8,750,000 \end{aligned}$$

$$\begin{aligned} \text{Taxpayer D} &= \frac{\$4,000,000}{\$40,000,000} \times \$35,000,000 \\ &= \$3,500,000 \end{aligned}$$

The credits that could not be allocated for tax year 2019 due to the aggregate cap are allocated to Taxpayers A, B, C, and D for tax year 2020 as follows:

$$\begin{aligned} \text{Taxpayer A} &= \$1,750,000 \quad (\$14,000,000 - \$12,250,000) \\ \text{Taxpayer B} &= \$1,500,000 \quad (\$12,000,000 - \$10,500,000) \\ \text{Taxpayer C} &= \$1,250,000 \quad (\$10,000,000 - \$8,750,000) \\ \text{Taxpayer D} &= \$500,000 \quad (\$4,000,000 - \$3,500,000) \end{aligned}$$

Example 2:

Assume the same facts as Example 1. Taxpayers E, F, and G are all calendar year taxpayers and each submits a timely production report to the Hawaii film office by March 31, 2021. Taxpayers E, F, and G applied for \$15,000,000, \$12,000,000, and \$10,000,000 of credits respectively.

Since \$5,000,000 of the aggregate cap has been allocated to Taxpayers A, B, C, and D, only \$30,000,000 (\$35,000,000 - \$5,000,000) may be allocated to Taxpayers E, F, and G for tax year 2020 (application year).

The credits allocated to Taxpayers E, F, and G for tax year 2020 (application year) are as follows:

$$\begin{aligned} \text{Taxpayer E} &= \frac{\$15,000,000}{\$37,000,000} \times \$30,000,000 \\ &= \$12,162,162 \end{aligned}$$

$$\begin{aligned} \text{Taxpayer F} &= \frac{\$12,000,000}{\$37,000,000} \times \$30,000,000 \\ &= \$9,729,730 \end{aligned}$$

$$\begin{aligned} \text{Taxpayer G} &= \frac{\$10,000,000}{\$37,000,000} \times \$30,000,000 \\ &= \$8,108,108 \end{aligned}$$

The credits that could not be allocated for tax year 2020 due to the aggregate cap are allocated to Taxpayers E, F, and G for tax year 2021 as follows:

$$\begin{aligned} \text{Taxpayer E} &= \$2,837,838 \quad (\$15,000,000 - \$12,162,162) \\ \text{Taxpayer G} &= \$2,270,270 \quad (\$12,000,000 - \$9,729,730) \\ \text{Taxpayer F} &= \$1,891,892 \quad (\$10,000,000 - \$8,108,108) \end{aligned}$$

[Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-05 Claim for credit; costs incurred in more than one taxable year. (a) The credit under section 235-17, HRS, is based on the qualified production costs incurred during each taxable year. A taxpayer with qualified production costs for one production that incurs qualified production costs in more than one taxable year must submit a production report as described in section 18-235-17-03(b) to the Hawaii film office for each taxable year in which qualified production costs are incurred.

(b) If a qualified production incurs qualified production costs in two separate taxable years, then the credit under section 235-17, HRS, for each taxable year will be based upon the qualified production costs incurred in each respective tax year.

Example:

XYZ Productions incurs qualified production costs totaling \$400,000 in 2014 and incurs qualified production costs totaling \$500,000 in 2015. XYZ Productions must claim the credit in the two separate taxable years based upon the qualified production costs incurred in each respective taxable year. XYZ Productions must file for the credit once for the 2014 taxable year claiming the credit for the qualified production costs incurred in that taxable year and once for the 2015 taxable year claiming the credit for the qualified production costs incurred in that taxable year. A separate production report must be submitted in the succeeding taxable year to account for qualified production costs incurred in the subsequent taxable year. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-06 Claiming the credit; timing; twelve-month rule. (a) Section 235-17(c), HRS, requires all claims for the credit, including amended claims, be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the twelve-month filing requirement constitutes waiver of the right to claim the credit.

(b) Waiver of the credit due to an untimely claim is final and cannot be appealed. The department has no authority to suspend or waive this provision. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-07 Qualified productions; \$200,000 threshold determination. (a) Section 235-17(d)(2), HRS, requires that a production have qualified production costs totaling at least \$200,000, among other requirements, in order to qualify for the credit.

(b) Each production must independently meet the \$200,000 qualified production cost threshold imposed by section 235-17(d)(2), HRS. A taxpayer may not combine the qualified production costs of separate productions to meet the \$200,000 qualified productions cost threshold. A taxpayer may combine the qualified production costs of multiple taxpayers associated with a single production to meet the \$200,000 qualified production costs threshold.

Example 1:

XYZ Productions is a calendar year taxpayer and begins producing its film in the State on January 1, 2020. During the tax year, the production incurs qualified production costs totaling \$75,000. Because the \$200,000 qualified production costs threshold has not been met, XYZ Productions does not qualify for the tax credit and cannot claim the tax credit.

Example 2:

XYZ Productions produces four productions throughout the taxable year, with each production incurring qualified production costs of \$75,000. For the entire taxable year, XYZ Productions has incurred qualified production costs in excess of \$200,000 for all productions. Because no individual production incurred qualified production costs of at least \$200,000, XYZ Productions cannot claim the credit. This is true even though XYZ Productions incurred qualified production costs in excess of \$200,000 in the aggregate during the taxable year.

(c) If in one tax year a production does not meet the \$200,000 qualified production costs threshold imposed by section 235-17(d)(2), HRS, but incurs qualified production costs in a subsequent tax year that when combined with qualified production costs in the previous tax year satisfy the \$200,000 threshold, the taxpayer may claim the credit under section 235-17, HRS, for the production. To claim the credit the taxpayer must submit a production report to the Hawaii film office as described in section 18-235-17-02(b). The Hawaii film office will issue a

certificate to the taxpayer certifying the amount of the qualified production costs for the prior year. In order to properly claim the credit for the prior year the taxpayer must amend its income tax return for that year and attach the certificate to its amended tax return, along with any other required forms.

Example 1:

Assume the same facts as subsection (b) Example 1, except that in June of 2021, the same production incurs qualified production costs totaling \$250,000. Total qualified production costs associated with the production now exceed \$200,000. Because the production now has qualified production costs of at least \$200,000, XYZ Productions can file an amended return for 2020 taking into account the \$75,000 in qualified production costs incurred during 2020; provided a timely amended return is filed within twelve months following the close of the taxable year for which the credit may be claimed.

Example 2:

Assume the same facts as subsection (b) Example 1, except that in June of 2021, the same production incurs qualified production costs totaling \$75,000. Total qualified production costs associated with the production total only \$150,000. Because the \$200,000 qualified production costs threshold has not been met, XYZ Productions cannot claim the tax credit.
[Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-08 Distribution of credit. Section 235-17(a), HRS, provides that the cost upon which the tax credit is computed is determined at the entity level for partnerships, S corporations, estates, and trusts. The credit cannot be claimed at the entity level for a partnership, S corporation, estate, or trust unless such entity has elected to be taxed as a corporation under relevant federal tax law. Distributions of the credit under section 235-17, HRS, shall be made in accordance with Subchapter K, Subchapter J, Subchapter S, or other relevant pass-through entity allocation laws of the Internal Revenue Code of 1986, as amended, to which the State conforms. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-09 Prorating qualified production costs between counties in Hawaii; airfare and shipping costs. (a) Section 235-17(a), HRS, provides that a taxpayer claiming the credit may prorate its expenditures based upon the amount spent in each county if the population bases differ enough to change the percentage of tax credit. Qualified production costs may be prorated only when costs are incurred in two or more counties of the State. Qualified production costs cannot be prorated between other states or countries and the State.

(b) Proration is not necessary if costs are incurred solely in counties with a population of seven hundred thousand or less. The place where the good or service is consumed determines where the cost is incurred for the purposes of this tax credit.

(c) Qualified production costs may be prorated amongst the counties by any reasonable method, taking into account the specific facts and circumstances in any particular case.

Example 1:

XYZ Productions rents a camera from Oahu Camera Company located in Honolulu county, for use on its movie set located in both Honolulu county and Kauai county. Oahu Camera Company is headquartered in Honolulu county and has no business operations in Kauai county. Use of the camera was divided among the counties accordingly: one-fourth of the use occurred in Honolulu county; three-fourths of the use occurred in Kauai county. The cost of the camera rental may be prorated between the counties based upon the equipment's use in each county because the respective county populations entitle XYZ to different tax credit rates. One-fourth of the cost (the use in Honolulu county) qualifies for the credit at the twenty per cent rate. Three-fourths of the cost (the use in Kauai county) qualifies for the credit at the twenty-five per cent rate. Time spent in transit while transporting or shipping the camera will not be taken into account in calculating use for purposes of this example.

Example 2:

Assume the same facts in Example 1, except that the cost of the camera rental, which includes the shipping cost, is paid for in Honolulu county and all use of the camera occurs in Kauai county. There is no prorating issue raised by this example because all use of the camera

occurred in Kauai county. Therefore, the entire cost of the camera rental qualifies for the credit at the twenty-five per cent rate.

(d) The department will not challenge the prorating of a qualified production cost for airfare, shipping, or other costs of a similar nature, where two counties equally impact said cost; provided that to qualify for this safe harbor, the taxpayer must:

- (1) Divide the total cost in half;
- (2) Apply the twenty per cent tax credit rate to one-half of the cost;
- (3) Apply the twenty-five per cent tax credit rate to the other half of the cost; and
- (4) Claim the credit for the prorated qualified production cost in the amount of the sum of the twenty per cent rate product and the twenty-five per cent rate product.

Example 1:

XYZ Productions purchases airfare to transport talent and crew from Honolulu to Kailua-Kona on the Big Island of Hawaii. Production activities occurred on both islands. Honolulu and Hawaii counties have disparate county populations with the former having a population of greater than seven hundred thousand and the latter having a population of less than seven hundred thousand. The cost of the total airfare is \$1,000. To qualify for the safe harbor provided by section 18-235-17-09(d), XYZ Productions must divide the total fare (\$1,000) in half (\$500 and \$500). Then, XYZ Productions must take the tax credit at the twenty per cent rate for half of the cost ($\$500 \times 20\% = \100), and take the credit at the twenty-five per cent rate for the other half of the cost ($\$500 \times 25\% = \125). XYZ Productions' total credit properly allocable for the airfare is \$225.

Example 2:

Assume the same facts in Example 1, except that the cost is to transport talent and crew from Los Angeles to Kailua-Kona for a production occurring only in Hawaii county. The prorating safe harbor and this section do not apply to this example. The amount of credit for airfare costs to the State will be determined solely by the

destination county. Based upon the facts in this example, the total cost of airfare to transport talent and crew to Kailua-Kona will qualify for the credit at the twenty-five per cent rate. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-10 Qualified production costs; generally. (a) Section 235-17, HRS, provides a refundable income tax credit for a qualified production's expenditure of qualified production costs. Qualified production costs are those costs incurred by a qualified production in the State that are subject to either:

- (1) Hawaii income tax under chapter 235, HRS; or
- (2) Hawaii general excise tax under chapter 237, HRS.

(b) Qualified production costs do not include costs financed or paid for with funds that represent an investment for which a credit was or will be claimed under section 235-110.9, HRS.

(c) Rentals and fees for use of State and county facilities and locations may be qualified production costs even though the State and counties are not subject to tax under chapter 235 or chapter 237, HRS, on those rentals and fees.

(d) Any government-imposed fines, penalties, or interest incurred by a qualified production within the State are not qualified production costs. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-11 Qualified production costs; subject to chapter 235 or 237, HRS. (a) As used in this section:

"Fringe benefits" means the following benefits commonly associated with the motion picture and film production industry:

- (1) Unemployment insurance premium costs;
- (2) Workers compensation insurance;
- (3) Union pension and welfare benefits to the extent required by contract between the union and the qualified production; and
- (4) Health insurance.

"Kit or box" means the personal tools, accessories, or other equipment of a specialist or tradesperson that utilizes the instruments to complete their specialized tasks in the motion picture and television film industry and includes a makeup artist's equipment and a set designer's construction tools.

"Per diem" means an allowance to an employee or contractor, provided through an accountable plan or a nonaccountable plan under section 62(c) of the Internal Revenue Code of 1986, as amended, provided by a qualified production as reimbursement for lodging, meals, and incidental expenses of the employee or contractor while the individual is away from home during work-related travel in the State.

(b) A production cost will be considered subject to chapter 235, HRS, or chapter 237, HRS, if the person or entity delivering the goods or performing the services is subject to either tax. It is a taxpayer's responsibility to determine whether a vendor, employee, contractor, or other business or person is subject to Hawaii income tax under chapter 235 or Hawaii general excise tax under chapter 237, HRS.

Example 1:

ABC Airlines is a commercial airline that flies from Los Angeles, California to Honolulu, Hawaii. ABC Airlines has business operations in the State; however it also has business operations in other jurisdictions. ABC Airlines is subject to Hawaii income tax on an apportioned basis. XYZ Productions contracts with ABC Airlines to transport its cast and crew from Los Angeles, California to Honolulu, Hawaii to shoot a motion picture. The cost of roundtrip airfare on ABC Airlines is a qualified production cost for purposes of the credit under section 235-17, HRS, because ABC Airlines, which is delivering the service, is subject to Hawaii income tax.

Example 2:

123 Catering, a Hawaii limited liability company, is a vendor to local productions for catering services. 123 Catering has business operations only in the State and is therefore subject to Hawaii income tax and general excise tax. XYZ Productions contracts with 123 Catering to provide plate lunches to its cast and crew for a production taking place in the State. The cost of catering services provided by 123 Catering to XYZ Productions is a qualified production cost for purposes of the credit under section 235-17, HRS, because 123 Catering, which is delivering the goods, is subject to Hawaii income and general excise taxes.

Example 3:

Steve Screenwriter, a resident of California with no contacts with the State and not subject to Hawaii income tax, is an author and screenplay writer. XYZ Productions, a Hawaii limited liability company, intends to shoot a movie in the State. Steve Screenwriter sells his screenplay to XYZ Productions. The cost of Steve Screenwriter's screenplay is not a qualifying production cost because Steve Screenwriter is not subject to Hawaii income or general excise tax.

Example 4:

Assume the same facts as Example 3, except that Steve Screenwriter is a resident of the State and subject to Hawaii income and general excise tax. The cost of Steve Screenwriter's screenplay, though not listed as one of the specific examples of a "qualified production cost" in section 235-17(1), HRS, is a qualified production cost because Steve Screenwriter is subject to Hawaii income and general excise taxes.

Example 5:

XYZ Productions, a California-based production company doing business in the State, ships filming equipment from California to the State to produce a commercial. XYZ Productions contracts with two shipping companies: FastShip, a same-day air travel parcel shipping company, to ship copies of the scripts, contracts, and costumes; and

BigShip, a freight forwarder, to ship cameras, set materials, rigging, and other large objects. Both shipping companies have a presence in the State, as well as on the mainland, and are subject to Hawaii income tax on an apportioned basis and general excise tax. The shipping costs incurred from both FastShip and BigShip are qualified production costs to the extent that those amounts are subject to Hawaii income or general excise taxes.

Example 6:

Gus Grip, a resident of California, is hired by XYZ Productions to help film a movie in the State. Under State law, the wages of Gus Grip earned in the State are subject to Hawaii income tax under section 235-4(b), HRS, and section 18-235-4-03. Gus Grip's wages, if earned in the State, are qualified production costs for purposes of the credit under section 235-17, HRS. Employment taxes paid by XYZ Productions in connection with Gus Grip's wages (including Medicare and Social Security taxes) are also qualified production costs.

Example 7:

Sam Staff, a resident of California, is a full-time employee of XYZ Productions working out of XYZ's California headquarters. XYZ utilizes Sam Staff to work in the State on-location temporarily. Because Sam Staff is subject to tax on the amount of income earned in the State, the amount of Sam Staff's salary earned while working in the State is a qualified production cost.

Example 8:

Lenny Loaner, a resident of California, performs services for XYZ Productions to film a movie in the State through the contracting of Lenny Loaner's loan-out company. XYZ pays fees to Lenny Loaner's loan-out company for services provided in the State that represent wages or salary for Lenny Loaner. Because Lenny Loaner's loan-out company is subject to Hawaii income tax and general excise tax, the fees XYZ pays to Lenny Loaner's loan-out company are qualified production costs.

Example 9:

Assume the same facts as Example 8 except that the income Lenny Loaner's loan-out company receives is royalty income excluded by section 235-7.3, HRS. Because Lenny Loaner's loan-out company is subject to Hawaii income tax and general excise tax due to its activities in the State, the fees XYZ pays to Lenny Loaner's loan-out company are qualified production costs regardless of whether the income is in fact excluded by section 235-7.3, HRS.

Example 10:

Gus Grip, a resident of the State, is hired by XYZ Productions to film a movie in the State. XYZ Productions pays Gus Grip wages and gives Gus Grip a per diem allowance while working in the State. Because Gus Grip is subject to Hawaii income tax on the amount of income earned in the State, the amounts of both the wages and the per diem allowance are qualified production costs.

Example 11:

Assume the same facts as Example 10 except that XYZ Productions provides Gus Grip with fringe benefits as defined in section 18-235-17-11. Because Gus Grip is subject to Hawaii income tax on the amount of income earned in the State, the cost of fringe benefits XYZ provides to Gus Grip are qualified production costs to the extent the costs are incurred in the State.

Example 12:

Molly Makeup, a resident of California, is hired by XYZ Productions to perform for the filming of a movie in the State. XYZ Productions pays Molly Makeup wages and agrees to rent her kit or box from her. Because Molly Makeup is subject to Hawaii income tax on the amount of income earned in the State and general excise tax on the kit or box rental, the amount XYZ pays for her wages and to rent her kit or box are qualified production costs.

Example 13:

XYZ Productions is filming on location at a church, owned by an Internal Revenue Code section 501(c)(3) tax-exempt religious organization the exempt purpose of which is to advance religious practices of its congregation. XYZ pays the church \$1,000 in rent for the use of the church facility for one day of shooting. The rent's primary purpose is the production of income, even if the rental income is later used for the church's exempt purposes. The \$1,000 rent payment is taxable under chapter 237, HRS, and therefore qualifies as a qualified production cost under section 235-17, HRS. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-12 Qualified production costs; production services fees. (a) Qualified production costs may include production services fees; except as otherwise provided in this section.

(b) "Production services fee" for purposes of the credit under section 235-17, HRS, generally means a line item fee charged by a production company to its customer for ordinary and necessary production expenditures incurred in the ordinary course of producing a motion picture on an incidental or attendant basis, and may be calculated as a percentage of the production's billed cost. Components of a production services fee may include:

- (1) Office overhead;
- (2) Miscellaneous labor;
- (3) Rent;
- (4) Insurance;
- (5) Lighting, heating, cooling, or similar costs;
- (6) Accounting services or fees;
- (7) Telephone and other communication costs;
- (8) Depreciation, amortization, and other like costs; and
- (9) Mark-up or profit potential realized by a production company to the extent the production services fee is greater than actual expenditures that otherwise constitute the fee charged.

(c) A production services fee constitutes a qualified production cost for purposes of the credit under section 235-17, HRS, only to the extent the production service fee is paid by the taxpayer claiming the credit.

(d) No credit is allowed for a production services fee charged by the entity claiming the credit, unless the entity claiming the credit for the production services fee can produce documentary evidence of expenditures that the claiming entity actually paid for qualified production costs to third parties.

Example 1:

XYZ Production Company charges 123 Advertising, its client company, a production services fee of \$5,000, which represents one per cent of the total cost of producing a commercial. 123 Advertising is the entity claiming the credit under section 235-17, HRS, for the qualified production costs incurred in creating the commercial. The \$5,000 production services fee charged by XYZ Production Company and paid by 123 Advertising is a qualified production cost within the meaning of section 235-17, HRS,

because the production services fee is paid by 123 Advertising, the taxpayer claiming the credit.

Example 2:

Assume the same facts as Example 1, except that XYZ Production Company will be the entity claiming the credit and charges the same \$5,000 production services fee to 123 Advertising. The production services fee does not qualify as a qualified production cost for purposes of the credit under section 235-17, HRS, because XYZ Production Company did not pay the production services fee. The production services fee was a line item on the invoice for 123 Advertising and, except as discussed in Example 3, is profit or mark-up that XYZ Production Company was able to enjoy because the fee was greater than costs actually incurred.

Example 3:

Assume the same facts as in Example 2, except that XYZ Production Company can prove to the Hawaii film office's satisfaction that the \$5,000 production services fee included \$100 for coffee; \$200 for tape from a local hardware store; \$700 for telephone services; and \$500 in other incidental supplies used in the back office. XYZ Production Company may claim as a qualified production cost the \$1,500 of the production services fee that it can prove constitutes qualified production costs paid by the claiming entity. The remaining \$3,500 of the production services fee does not qualify as a qualified production cost because XYZ Production Company paid nothing for this amount and it is XYZ Production Company's profit mark-up. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-13 Qualified production costs; credit calculation for fixed equipment costs. (a) Section 235-17(m), HRS, defines qualified production costs to include costs of equipment and any additional production cost determined by the director in consultation with the department of business, economic development, and tourism; provided that the cost is incurred in the State and subject to either chapter 235 or 237, HRS. Section 235-17(a), HRS, precludes any cost from qualifying if a deduction for the cost is taken under section 179 of the Internal Revenue Code of 1986, as amended.

(b) In many instances, motion picture production companies own fixed equipment that is used for filming various productions. Examples of fixed equipment include cameras, lights, computers, and trucks. These items are usually purchased as a matter of business necessity and are not necessarily associated with any specific production. The fixed equipment, however, is utilized by the production companies' various film ventures on an as-needed basis. A taxpayer that utilizes fixed equipment in a State film production may claim as a qualified production cost the amount of the depreciation allowance, if any, for the equipment for the taxpayer's taxable year, prorated for the amount of equipment actually used in the State; provided that a deduction has not been taken under section 179 of the Internal Revenue Code of 1986, as amended, with respect to the equipment. The depreciation allowance allowable under State law shall be utilized to calculate the credit amount under this section.

Example:

XYZ Production Company has cameras that it ships to the State to film a production for six months. All of these cameras were purchased by the production company prior to production in the State and have been utilized as equipment for the past few years on other film projects. These cameras are available on a checkout basis for all productions being created by XYZ Production Company. Assume that the cameras are all "5 year" property under Internal Revenue Code depreciation conventions and assume further that a deduction under section 179 of the Internal Revenue Code of 1986, as amended, was not taken with respect to the cameras and that depreciation deductions have been taken in prior years. Assume further that XYZ Production Company is entitled to take a depreciation allowance for the cameras for the taxable year of the production in the State equal to \$1,000. XYZ Production

Company can claim as a qualified production cost an amount equal to the depreciation allowance for the taxable year in which the production activities occurred prorated for the amount of use in the State. In this case, because the cameras are used in the State for six months, a \$500 qualified production cost is incurred for purposes of the credit under section 235-17, HRS. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-14 Qualified production costs; imported goods, services, or contracting subject to the use tax; claim for products or services acquired outside of this State. (a)

Section 235-17(m), HRS, defines qualified production costs to include costs incurred by a qualified production within the State that are subject to chapter 237, HRS. Not all business transactions occurring in the State are subject to chapter 237, HRS. In order to ensure a level playing field among business transacted both within and without the State, to avoid constitutionally infringing upon out-of-state taxpayers, and to complement the general excise tax as an overall excise tax regime, there is imposed in the State a complementary tax on the use in this State of tangible personal property, services, or contracting imported into the State under chapter 238, HRS (Hawaii use tax law).

(b) Importation of goods, services, or contracting into the State from out of state for use in the State is subject to chapter 238, HRS, capturing the general excise tax equivalent. Effectively, chapter 238, HRS, serves as a substitute for the State's general excise tax under chapter 237, HRS. Because chapter 238, HRS, is a substitute for Hawaii general excise tax, production costs incurred by a qualified production in the State, which would otherwise qualify as a qualified production cost if subject to the general excise tax, are considered subject to tax within the meaning of "qualified production costs" under section 235-17(1), HRS, where the production cost is for an item of tangible personal property, for a service, or for contracting that is subject to the use tax under chapter 238, HRS, and on which the use tax is actually paid.

(c) Section 235-17(d)(5), HRS, requires that a production provide to the department of business, economic development, and tourism evidence that reasonable efforts were unsuccessful to secure and use comparable products or services within this State when making any claim for products or services acquired outside of this State. To satisfy section 235-17(d)(5), the department of business, economic development, and tourism may accept from a taxpayer a sworn statement, under the penalties set forth in section 231-36, HRS, that reasonable efforts to secure and use products and services within this State were unsuccessful. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-15 Qualified production costs; premiums paid to insurers subject to tax under chapter 431, HRS. (a) Section 235-17(m), HRS, defines qualified production costs to include costs incurred by a qualified production within the State that are subject to chapter 235, HRS. Not all taxpayers conducting business transactions occurring in the State are subject to chapter 235, HRS. In recognition of its unique business structure and place within the community, authorized insurers are subject to tax on insurance premium income under chapter 431, HRS, in lieu of tax under chapter 235, HRS.

(b) Income from insurance premiums is generally subject to tax under chapter 431, HRS, capturing an amount in lieu of income tax. Effectively, chapter 431, HRS, serves as a substitute for the State's income tax under chapter 235, HRS. Because chapter 431, HRS, is a substitute for Hawaii income tax, production costs incurred by a qualified production in the State, which would otherwise qualify as a qualified production cost if subject to the State's income tax, are considered subject to tax within the meaning of "qualified production costs" under section 235-17(m), HRS, where the production cost is subject to the tax on insurers under chapter 431, HRS, and on which the tax is actually paid. Insurance premiums paid to insurance companies not registered with the State are presumed not to be subject to tax under chapter 431, HRS, and thus are not qualified production costs under 235-17, HRS.

Example 1:

XYZ Productions is filming a qualified production in the State and pays insurance premiums to ACCE Insurance Company, which is doing business in the State, for insurance on XYZ's activities and property associated with the qualified production. The insurance premiums XYZ pays to the insurance company are qualified production costs under section 235-17, HRS.

Example 2:

XYZ Productions is filming a qualified production in the State and pays insurance premiums to DEED Insurance Company, which is not registered to do business in the State, for insurance on XYZ's activities. The insurance premiums XYZ pays to DEED Insurance Company are presumed not subject to chapter 431, HRS, and not qualified production costs under chapter 235-17, HRS. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-16 Verification review of motion picture, digital media, and film production income tax credit claims.

(a) As required by section 235-17(h), HRS, and Section 6 of Act 143, Session Laws of Hawaii 2017, a taxpayer claiming the tax credit under section 235-17, HRS, must submit to the Hawaii film office a verification review, together with a production report as described in section 235-17-03(b), no later than ninety days following the end of the taxable year in which the qualified production costs were incurred.

(c) It is not necessary that the verification review be addressed to, or be relied upon by, any person other than the taxpayer.

(d) It is the taxpayer's responsibility to provide all relevant information to the taxpayer's qualified certified public accountant.

(e) The cost of the verification review shall be the responsibility of the taxpayer. The cost of the verification review is a qualified production cost for the taxable year the verification review relates to; provided the cost is subject to taxation under chapter 235 or chapter 237, HRS.

(f) Inclusion of a verification review with the production report does not preclude the department from auditing and adjusting the tax credit amounts claimed. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17; SLH 2017, Act 143, §6)

§18-235-17-17 Hawaii promotion; shared-card, end-title screen credit. (a) Section 235-17(d)(3), HRS, requires that a production provide the State a qualified Hawaii promotion, at a minimum, a shared-card, end-title screen credit. A shared-card, end-title screen credit is provided by:

- (1) Including in the end credits of each qualified production the phrase "Filmed on location on the Island of _____ in Hawaii with the assistance of Hawaii Production Tax Credits administered by the Hawaii Film Office and the Department of Taxation" and a logo provided by the Hawaii film office; and
- (2) Including in each qualified production distributed by digital video disc, Blu-ray disc, digital download, or other media for the secondary market, a Hawaii promotional video approved by the Hawaii film office.

(b) A production must submit a still shot, frame grab, finished copy of the qualified production in a media format acceptable to the Hawaii film office, or other documentation that the Hawaii film office may require. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-18 Evidence of reasonable efforts to hire local talent and crew. (a) Section 235-17(d)(4), HRS, requires that a production provide to the department of business, economic development, and tourism, evidence of reasonable efforts to hire local talent and crew.

(b) Evidence of reasonable efforts to hire local talent and crew means:

- (1) Documentary evidence of having contacted State chapters of industry unions or guilds, including the date and time of any telephone calls, emails or other contact; the name of the union or guild representative contacted; the name of the production representative initiating contact; and the name of the union or guild contacted; or
- (2) Documentary evidence of the specific means of notifying the public of the production's desire to hire local talent and crew, including copies of any press releases; solicitations; requests for proposals; bids; local newspaper ads; trade journal ads; flyers posted; open casting calls; radio spots; Hawaii film office website or other internet posting; or engagement of local production professionals as references for local talent and crew hires. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-19 Evidence of financial or in-kind contributions to educational or workforce development for the local film, television, and digital media industry. (a)

Section 235-17(d)(6), HRS, requires that a production provide to the department of business, economic development, and tourism, 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, television, and digital media industries.

(b) Only one contribution is necessary to satisfy the requirement under section 235-17(d)(6), HRS. However, a production may make multiple contributions.

(c) Refundable contributions do not satisfy section 235-17(d)(6), HRS. Any term allowing for refundability disqualifies a contribution from satisfying section 235-17(d)(6), HRS, including refundability contingent only upon a production failing to qualify to claim the credit under section 235-17, HRS.

(d) Contributions do not satisfy section 235-17(d)(6), HRS, if a charitable deduction is taken for the contribution under section 170 of the Internal Revenue Code of 1986, as amended, or under conformity to such section.

(e) Contributions are not qualified production costs.

(f) The following contributions qualify for purposes of section 235-17(d)(6), HRS:

(1) Financial contributions to State public or charter schools totaling at least 0.1 per cent of a production's qualified production costs or \$1,000, whichever is higher. Financial contributions must be made in cash specifically to an arts program at a State public or charter elementary school, middle school, high school, or post-secondary school, preferably to a school in the same community in which the production takes place. Arts programs may include film, video, radio, performing arts, theater, music, and visual and fine arts;

(2) In-kind contributions to State public or charter schools totaling at least the equivalent value of 0.1 per cent of a production's qualified production costs or \$1,000, whichever is higher. Contributions of in-kind property or services must be made specifically to an arts program at a State public or charter school, preferably in the same community in which production takes place. The in-kind contribution must include production-related property or services, such as

cameras and sound equipment, editing/post-production equipment, grip/electric equipment, computer hardware/software, props/set dressing, costumes, or other property or services previously agreed to by school administrators;

- (3) Educational programs provided to State public or charter schools consisting of at least one on-set or post-production internship arrangement with a State public or charter high school or post-secondary school, preferably in the same community in which the production takes place. The internship must include a total of at least eight hours of arts or digital media education-related volunteer services, such as teaching acting classes, directing a school play, participating in animated student projects, or giving craft seminars. The internship may be arranged with any cast or crew. The minimum time requirement, at the discretion of the Hawaii film office, may be reduced based upon the value of services;
- (4) Educational programs provided to local labor union chapters consisting of at least one on-set craft apprenticeship arranged with one of the local labor union chapters. The apprenticeship must include a total of at least eight hours of education-related volunteer services, such as giving a craft-related seminar. The apprenticeship may be arranged with any cast or crew. The minimum time requirement, at the discretion of the Hawaii film office, may be reduced based upon the value of services;
- (5) Hawaii Film seminar participation with the Hawaii film office consisting of participation as a speaker in two or more Hawaii Film seminars. Such participation may also be used to offset the minimum eight hours of volunteer services required in paragraph (3) or (4). Participation in one seminar shall be equal to two hours of volunteer services; and
- (6) Any other financial or in-kind contributions or any other educational or workforce development approved by the Hawaii film office. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-20 Production company personnel and contractors; required Hawaii tax notice. (a) Any taxpayer claiming the income tax credit allowed under section 235-17, HRS, shall 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 under this section shall 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.

(b) The tax advisory to be provided shall be any tax advisory made available to the motion picture and television film industry by the department through official pronouncement; or in a form that includes substantially the following:

"The purpose of this Tax Advisory is to provide notice to persons engaged in the motion picture and television film production industry (film industry) of their Hawaii tax obligations.

GENERAL EXCISE TAX OBLIGATIONS

All businesses, including loan-out companies and independent contractors, that engage in business in Hawaii are subject to the general excise tax (GET). GET is a privilege tax that is measured by the business' gross receipts. All businesses that provide services or have other business activities in the Hawaii film industry are subject to the GET, as they are engaged in business in Hawaii.

All businesses must register for a GET license prior to engaging in business in Hawaii. Submit Form BB-1 together with a one-time \$20 fee to register for a GET license. A \$500 fine will be imposed on any non-cash based business that receives income from engaging in business in Hawaii prior to registering for a GET license. Hawaii Revised Statutes (HRS) §237-9(c).

GET is reported and remitted by filing periodic returns (Form G-45), followed by an annual reconciliation return (Form G-49) after the end of the tax year. Other forms may be necessary depending upon the circumstances.

The penalty for failure to file a tax return by the deadline is 5% of the unpaid tax per month, with a maximum penalty of 25%. The penalty for failure to pay the tax within 60 days of timely filing a return is 20% of the amount that is unpaid. If the failure to pay tax is due to fraud, the penalty is an amount up to 50% of the underpayment. The interest on nonpayment of tax or underpayment of tax accrues at a rate of two-thirds of 1% per month. HRS §231-39.

Taxpayer may register, file and pay GET online through the Department's website at <https://hitax.hawaii.gov>.

INCOME TAX OBLIGATIONS

Income earned from performing services or conducting other business activities in Hawaii is taxable regardless of residency.

Wages earned while working in Hawaii as an employee (receiving Form W-2) are subject to Hawaii income tax for the amount of income earned from performing services or conducting other business activities in Hawaii.

Loan-out companies and independent contractors (receiving Form 1099) are also subject to Hawaii income tax on the income earned from performing services or conducting other business activities in Hawaii.

Income tax is reported and remitted by using the proper income tax form. Resident individuals must file Form N-11 and nonresidents or part-year resident individuals file Form N-15.

Corporations file Form N-30, S Corporations file N-35, and partnerships and multimember limited liability companies file Form N-20. Other forms may be necessary depending upon circumstances.

The penalty for failure to file a tax return by the deadline is 5% of the unpaid tax per month, with a maximum penalty of 25%. The penalty for failure to pay the tax within 60 days of timely filing a return is 20% of the amount that is unpaid. If the failure to pay tax is due to fraud, the penalty is an amount up to 50% of the underpayment. The interest on nonpayment of tax or

underpayment of tax accrues at a rate of two-thirds of 1% per month. HRS §231-39.

CONTACT A TAX PROFESSIONAL

The Department suggests that any person affected by this Tax Advisory contact a tax professional familiar with Hawaii tax laws to assist them with any Hawaii tax issues.

ADDITIONAL INFORMATION

For additional information:

- Website: tax.hawaii.gov
- Telephone: (808) 587-1530
- Fax: (808) 587-1584
- Hawaii Administrative Rules 18-235-17"

(c) A taxpayer claiming the tax credit under section 235-17, HRS, shall retain evidence that the tax advisory described in this section was provided to all nonresident employee, contractor, vendor, loan-out company, or other agent not later than thirty business days after engaging such party. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-21 Access to production company set and locations; required courtesy visit and press coverage. (a) All taxpayers submitting a production report to the Hawaii film office shall allow access to the taxpayer's production set or location at least once during production for a courtesy visit by government officials. Taxpayers are entitled to at least seven days notice of the government's intent to visit the taxpayer's set or locations. The taxpayer is entitled to escort the government officials on the visit and restrict access to any part of the set or location deemed proprietary or that access to which would result in competitive harm if government officials were allowed to visit. Government officials allowed to participate in the courtesy visit include Hawaii film office personnel; department personnel; State and county film commissioners; legislators; and other government officials.

(b) All taxpayers submitting a production report to the Hawaii film office shall submit to a press conference or agree to at least one press story, broadcast or print, as agreed to by both the production and the Hawaii film office, where the taxpayer and any of its representatives shall allow themselves to be interviewed by government officials and the media regarding the qualified production. The press conference or other press story shall be held at a location mutually agreed upon between the production and the Hawaii film office, and may be held at the production's set or other location.

(c) The courtesy visit and press requirements of this section must be satisfied before the Hawaii film office accepts a taxpayer's production report as being complete.

(d) Nothing in this section shall be interpreted as limiting or restricting the department's authority to access premises or documents, including subpoena power, otherwise allowed. [Eff xx/xx/xx] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)