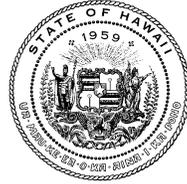


JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau

P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

October 10, 2024

GARY S. SUGANUMA
DIRECTOR OF TAXATION

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

TAX INFORMATION RELEASE NO. 2024-04

RE: General Excise Tax on Payments Made by Film Production Companies to Payroll Service Providers

This Tax Information Release (TIR) provides guidance on the imposition and calculation of the Hawai'i general excise tax (GET) to payroll service providers hired by film production companies operating in the State, application of the GET exemption for professional employer organizations (PEOs) under section 237-24.75(3), Hawaii Revised Statutes (HRS), and whether payments made by a production company to a payroll service provider are eligible to be claimed as qualified production costs for the motion picture, digital media, and film production income tax credit (the "Film Credit") under section 235-17, HRS.

Imposition and Calculation of GET on Payments from Production Companies to Contracted Payroll Service Providers

The GET is a privilege tax imposed on business activity in the State of Hawai'i. The tax is imposed on all gross income received from engaging in business activity as defined under section 235-3, HRS. All gross receipts of a business are considered taxable gross income unless specifically exempted. Thus, a payroll service company is subject to GET on all amounts received from a film production company, including wages, salaries, and employment benefits, unless there is a statutory exemption for such amounts.

Section 237-24.75(3), HRS, provides a GET exemption for certain amounts received by a PEO:

Amounts received by a professional employer organization that is registered with the department of labor and industrial relations pursuant to chapter 373L, from a client company equal to amounts that are disbursed by the professional employer organization for employee wages, salaries, payroll taxes, insurance premiums, and benefits, including retirement, vacation, sick leave, health benefits, and similar employment benefits with respect to covered employees at a client company; provided that this exemption shall not apply to amounts received by a professional employer organization after:

- (A) Notification from the department of labor and industrial relations that the professional employer organization has not fulfilled or maintained the registration requirements

- under this chapter; or
- (B) A determination by the department that the professional employer organization has failed to pay any tax withholding for covered employees or any federal or state taxes for which the professional employer organization is responsible.

As used in this paragraph, “professional employer organization”, “client company”, and “covered employee” shall have the meanings provided in section 373L-1.

HRS § 237-24.75(3) (emphasis added).

Section 373L-1, HRS, defines “professional employer organization” as “any person that is a party to a professional employer agreement with a client company and whose covered employees perform services on a long-term, rather than temporary or project-specific basis. The term does not include temporary help services, staff leasing, or other similar arrangements.”

The term “professional employer agreement” is defined in section 373L-1, HRS, as follows:

- “Professional employer agreement” means a written contract by and between a client company and a professional employer organization that:
- (1) Provides for covered employees to the client company;
 - (2) Describes the duties and responsibilities of the client company and the professional employer organization with respect to the covered employees; and
 - (3) Includes a declaration by the professional employer organization of the professional employer organization's responsibilities under section 373L-6.¹

Based on the foregoing, a film production payroll service provider may qualify for the PEO exemption under section 237-24.75, HRS, if the payroll service provider:

1. Meets the statutory definition of “professional employer organization”;
 2. Is registered with the Department of Labor and Industrial Relations (DLIR) as a PEO;
- and

¹ Section 373L-6, HRS, provides: “During the term of the agreement between a professional employer organization and its client company, the professional employer organization shall be deemed the employer for all covered employees for purposes of complying with all laws relating to unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care coverage and the professional employer organization shall provide written notification to each covered employee of this responsibility. ”

3. Has a written contract with the client company, *i.e.*, production company, that provides for covered employees, describes the duties and responsibilities of the client company and the PEO with respect to covered employees, and includes a declaration of the PEO's responsibilities under section 373L-6.

A valid section 237-24.75(3) exemption claim allows a PEO to exempt receipts that it disburses to covered employees of a client company. PEO receipts from a client company that are not disbursed to covered employees of the client company are not exempt under section 237-24.75(3), HRS.

Example 1: Pipeline Payroll is a registered PEO with DLIR. Pipeline receives \$1,000 from its client, 'Ehukai Employer, disbursed as follows: \$100 to Pipeline's service fee; \$900 to 'Ehukai's covered employees' wages, salaries, payroll taxes, insurance premiums, and benefits. GET is only assessed on Pipeline for the \$100 service fee payment because the remaining receipts are disbursements to 'Ehukai's covered employees.

Conversely, businesses that are not registered with DLIR under section 237-24.75(3), HRS, cannot claim the PEO exemption for amounts disbursed to client companies' employees.

Example 2: Pipeline Payroll is **not** registered with DLIR as a PEO. Pipeline receives \$1,000 from its client, 'Ehukai Employer, disbursed as follows: \$100 to Pipeline's service fee; \$900 to 'Ehukai's employees' wages, salaries, payroll taxes, insurance premiums, and benefits. GET is assessed on Pipeline for the entire \$1,000 received from 'Ehukai because Pipeline is not eligible to exempt amounts disbursed to 'Ehukai's employees under section 237-24.75(3), HRS.

"Passing On" GET on Transactions Between a Payroll Service Provider and Production Company

The "passing on" of GET in a transaction between a payroll service provider and production company is not required by law, but rather, is a contractual matter, where the production company agrees as a condition of the contract to also pay any GET that the payroll service provider owes to the State on the transaction.

Businesses, including payroll service providers, that are ineligible for the PEO exemption under section 237-24.75(3), HRS, may "pass on" GET up to the amount assessed on all receipts from a production company, including taxable amounts intended for disbursement to the third parties. On the other hand, PEOs claiming the exemption under section 237-24.75(3), HRS, may only "pass on" GET assessed on taxable income.

Film Credit Claims for Payments to Payroll Service Providers

Film Credit claims under section 235-17, HRS, may consider payments to either payroll service companies or PEOs as “qualified production costs” if the payments are subject to GET at the highest tax rate, or Hawai‘i state income tax if the costs are not subject to GET. Payments to payroll service companies or PEOs that are entirely subject to GET are qualified production costs for Film Credit purposes. Furthermore, amounts disbursed to employees through a payroll service company or a PEO claiming a GET exemption under section 237-24.75(3), HRS, may be claimed as qualified production costs if payments to the employees are subject to Hawai‘i state income tax.

If you have any questions about this TIR, please contact the Rules Office at 808-587-1530, or via email at Tax.Rules.Office@hawaii.gov.

GARY S. SUGANUMA
Director of Taxation