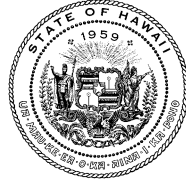


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November 19, 2019

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2019-15

RE: New Administrative Rules Relating to the Motion Picture, Digital Media, and Film Production Income Tax Credit, Effective November 17, 2019

On November 7, 2019, Governor David Ige signed and adopted 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 275, Session Laws of Hawaii (SLH) 2019 (Act 275) and Act 143, SLH 2017 (Act 143). This Tax Announcement serves as notice that these new administrative rules which took effect on November 17, 2019, supersede the following previously-issued film credit guidance:

- Tax Information Release (TIR) No. 2019-01 (revised): Proposed Administrative Rules Relating to the Motion Picture, Digital Media, and Film Production Income Tax Credit as amended by Act 143;
- TIR No. 2018-04: Guidance Regarding the Motion Picture, Digital Media, and Film Production Income Tax Credit; Temporary Hawaii Administrative Rules (HAR) §§ 18-235-17-01 to 18-235-17-20; Act 143, Session Laws of Hawaii 2017;
- Temporary Hawaii Administrative Rules §§ 18-235-17-01 to 18-235-17-20;
- TIR No. 2010-04: Interpretation of "Qualified Production" for purposes of Tax Credit Claims under the Motion Picture, Digital Media, and Film Production Income Tax Credit, HRS § 235-17;
- TIR No. 2009-05: Advanced Notice of Proposed Administrative Rules Relating to the Taxation of the Motion Picture and Television Film Production Industry;
- TIR No. 2008-02: Advanced Notice of Proposed Administrative Rules Relating to the Taxation of the Motion Picture and Television Film Production Industry; and
- TIR No. 2006-02: Refundable Income Tax Credit for Persons Engaged in the Motion Picture, Television, and Digital Media Production Business.

A summary of the notable changes regarding the administration of the film credit and related Hawaii tax issues:

- All taxpayers claiming the film credit must submit to the Hawaii Film Office a verification review as part of the post-production report as described in section 18-235-17-03(b), HAR, no later than 90 days following the end of the calendar year in which the qualified production costs were incurred.

- Qualified production costs are production costs that are directly attributable to and incurred by a qualified production in the State that are subject to the:
 - General Excise Tax (GET) at retail rate of 4% under chapter 237, HRS, if the payee is engaged in business in the State;
 - Use tax at retail rate of 4% under chapter 237, HRS, if the payee is not engaged in business in the State, or
 - Income tax under chapter 235, HRS, if the costs are not subject to GET or use tax.
- A motion picture, television, or film production company is not considered to be in the business of “manufacturing” for purposes of the GET under chapter 237, HRS. As a result, the 0.5% GET rate imposed under HRS section 237-18(c) does not apply to services provided to a motion picture, television, or film production company;
 - A loan-out company providing services to a qualified production company is subject to the GET at retail rate of 4%, plus any applicable county surcharge.
- Airfare is a qualified production cost subject to the following rules:
 - The airfare is to or from Hawaii or between the islands in the State;
 - The airfare does not include a scheduled layover that is twelve hours or longer; and
 - The cost of airfare may not exceed \$2,000 per person per way.
- Qualified production costs do not include:
 - Any amounts paid to the taxpayer claiming the credit or to any of the taxpayer’s related entities;
 - Any amounts paid as gratuity or a tip; and
 - Costs for which another state or county’s tax credit, rebate, or other incentive may be claimed.
- Per diem payments are a qualified production cost to the extent that the payments are subject to Hawaii income tax if paid by an employer to an employee, or GET at the retail rate of 4% if the payee is not an employee; and
- Fringe benefits provided by an employer to an employee are a qualified production cost to the extent that the fringe benefit is reported as a wage and is subject to Hawaii income tax.

TIR 2019-01 (revised) will remain in effect until November 17, 2019, the effective date of the Administrative Rules. If you have any questions regarding this Announcement, please contact the Rules Office by email at Tax.Rules.Office@hawaii.gov or by phone at (808) 587-1530.

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