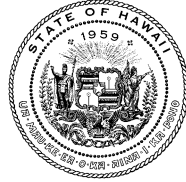


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November 19, 2019

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.

RONA M. SUZUKI
Director of Taxation

DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,
Hawaii Administrative Rules

Effective: November 17, 2019

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, and 18-235-17-19 are added.

§18-235-17-01 Definitions. For purposes of sections 18-235-17-01 through 18-235-17-19:

"Aggregate cap" means the total amount of credits that may be claimed by all taxpayers claiming the credit in a particular tax year. The aggregate cap is \$50,000,000 and applies to taxable years beginning after December 31, 2018.

"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.

"Initial claim year" means the first calendar year for which the credit is being applied for.

"Initial claim year" includes the second year of a split-year production claim if the first taxable year of the claim started in 2018.

"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.

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

"Per diem" means a reimbursement provided by a qualified production to an employee or contractor 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.

"Preproduction registration" means the same as described in section 18-235-17-03(a).

"Principal photography start date" means the first date of substantial and ongoing filming of significant portions of a qualified feature-length motion picture, short film, made-for-television movie, commercial, music video, interactive game, television series pilot, single season of a television series regularly filmed in the State, television special, single television episode that is not part of a television series regularly filmed or based in the State, national magazine show, or national talk show.

"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.

"Related entities" means two or more entities that have:

- (1) Any common ownership or membership; or
- (2) Directly or indirectly any common control.

"Split-year production" means a production that has submitted a preproduction registration to the Hawaii film office indicating that production will take place over a two-year period.

"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 calendar year and on or before ninety days from the end of the calendar year as required under section 235-17(h), HRS. A production report received before the end of the calendar year shall be deemed to have been received on the first day following the end of the calendar year. [Eff _____] (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)

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) 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 subject to chapter 235, HRS, is eligible to claim the credit under section 235-17, HRS. [Eff 11/17/2019] (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 is required to prequalify for the credit under section 235-17(f), HRS, by submitting a preproduction registration to the Hawaii film office. All taxpayers must submit a preproduction registration for each qualified production to the Hawaii film office no later than seven days before the principal photography start date. The preproduction registration shall 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;
- (3) An estimated budget; and
- (4) An estimated number of Hawaii resident and non-resident hires, including above-the-line, below-the-line, and extras.

The Hawaii film office will review each request for preproduction registration and issue a letter to each production, notifying the production that it has successfully prequalified under section 235-17(f), HRS. This letter shall also state the amount of credits that were tentatively allocated under section 18-235-17-04(c).

Failure to obtain preproduction registration approval and a tentative allocation of credit under section 18-235-17-04(c) from the Hawaii film office shall constitute a waiver of the credit.

(b) The production report required under section 235-17(h), HRS, shall be made on a calendar year basis. Not later than ninety days following the end of each calendar year in which qualified production costs were incurred, all taxpayers must submit a production report to the Hawaii film office. Failure to file a timely production report shall constitute a waiver of the credit. The production report must include:

- (1) A sworn statement identifying qualified production costs incurred during the calendar 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) A list of vendors in the format prescribed by the Hawaii film office, including the general excise tax license number of each vendor that is engaged in business in the State;
- (5) A list of loan-out companies in the format prescribed by the Hawaii film office, including the general excise tax license number of each loan-out company that is engaged in business in the State;
- (6) A list of costs for which use tax was properly paid and substantiation of such payment in the format prescribed by the Hawaii film office;
- (7) Crew list;
- (8) Confirmation of efforts to hire local talent and crew as described in section 18-235-17-16;
- (9) Confirmation of educational or workforce development contributions as described in section 18-235-17-17;
- (10) Verification of compliance with section 18-235-17-18(a);
- (11) A verification review as described in section 18-235-17-14; and
- (12) Information necessary to estimate the benefit of the credit provided in section 235-17, HRS, including:
 - (A) The number of Hawaii resident and non-resident hires: above-the-line, below-the-line, and extras;

- (B) Salary and wage information for resident actors, producers, directors, and other hires;
- (C) Salary and wage information for nonresident actors, producers, directors, and other hires; and
- (D) Any other information the Hawaii film office determines necessary to estimate the benefits of the credit provided in section 235-17, HRS.

Example :

Tommy Taxpayer is a fiscal year taxpayer whose tax year begins on April 1 and ends on March 31. Tommy Taxpayer submits his production report that covers production costs incurred from April 1, 2019 to December 31, 2019 to the Hawaii Film Office on April 20, 2020. Tommy Taxpayer's production report is not timely because it was not submitted within ninety days from the end of the calendar year as required under section 18-235-17-03(b).

(c) With respect to fiscal year taxpayers and the production report due on March 30, 2020, fiscal year taxpayers shall only report qualified production costs incurred from the first day of the taxpayer's fiscal year to December 31, 2019.

For production reports due on March 31, 2021, March 31, 2022, March 31, 2023, March 30, 2024, and March 31, 2025, fiscal year taxpayers shall report qualified production costs incurred from January 1 to December 31 of the preceding calendar year as if they were calendar year taxpayers.

Fiscal year taxpayers shall be allowed to submit final production reports that report qualified production costs incurred from January 1, 2025 to the last day of the taxpayer's fiscal year that began

after January 1, 2024. This final report shall be due no later than ninety days following the end of the taxpayer's fiscal year; provided that in no case shall any claims for credit be made after December 31, 2025.

Example 1:

FIS Productions is a fiscal year taxpayer whose tax year begins on April 1, 2019 and ends on March 31, 2020. FIS Productions may only report qualified production costs incurred from April 1, 2019 to December 31, 2019 because for fiscal year taxpayers' production reports due on March 30, 2020, only qualified production costs incurred from the first day of the taxpayer's fiscal year to December 31, 2019 may be reported.

Example 2:

Assume the same facts as Example 1. For the production report due on March 31, 2021, FIS Productions may report qualified production costs incurred from January 1, 2020 to December 31, 2020.

Example 3:

Assume the same facts as Example 1. FIS Productions may submit a final production report under section 18-235-17-03(c) reporting qualified production costs incurred from January 1, 2025 to March 31, 2025, the end of FIS Productions' fiscal year. This final report is due June 29, 2025, ninety days from the end of FIS Productions' fiscal year.

(d) The Hawaii film office shall not certify the credit under section 18-235-17-04(d) if the production report is incomplete. In certifying the credit, the

Hawaii film office may require any taxpayer to provide substantiation for any production costs.

(e) The Hawaii film office shall issue a certificate to the taxpayer stating the amount of qualified production costs and the amount of credit that was certified under section 18-235-17-04(d). 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.

(f) If a taxpayer produces more than one qualified production in a calendar year, the Hawaii film office shall issue a separate certificate for each qualified production.

(g) The Hawaii film office shall issue a single certificate per qualified production per calendar year. If multiple taxpayers participate in one qualified production, each taxpayer shall attach a copy of the certificate issued to the qualified production to the taxpayer's income tax return; provided that the amount of credit claimed shall not exceed the amount to which the taxpayer is entitled.

(h) The \$15,000,000 cap shall be applied per qualified production, not per taxpayer. If a taxpayer produces multiple qualified productions in one calendar year, the taxpayer may receive total credit for that calendar year in excess of \$15,000,000.

(i) Claims for credit under section 235-17, HRS, must correspond with the taxpayer's accounting method, except as provided in section 18-235-17-03(c). In general, a cash method taxpayer must claim all qualified production costs in the calendar year in which the costs were paid, as provided in section 461 of the Internal Revenue Code of 1986, as amended. 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 costs were properly incurred under section 461 of the Internal Revenue Code of 1986, as amended.

(j) Subsection (i), 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 to qualify for the tax credit under section 235-17, HRS. For additional discussion on the definitional requirement of a qualified production, see section 18-235-17-07.

(k) Fiscal year taxpayers shall claim the credit for the fiscal year during which the calendar year ends.

Example:

FYT Productions is a taxpayer with a fiscal tax year that begins on April 1 and ends on March 31. FYT Productions incurs qualified production costs during calendar year 2019 and receives a certificate from the Hawaii film office for these costs. FYT Productions must claim the credit for the tax year that begins on April 1, 2019 and ends on March 31, 2020 because the end of calendar year 2019 falls within this fiscal year. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-04 Claim for credit; aggregate cap; tentative allocation and certification 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 applied for in the subsequent year and shall be claimed in such year; provided that no credit shall be claimed after December 31, 2025.

(b) For purposes of applying the aggregate cap, tentatively allocating the credit under subsection (c), and certifying the credit under subsection (d), the Hawaii film office shall consider the year's claims for credits to be the total amount of credits applied for based on production costs incurred during the preceding calendar year. 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.

(c) The Hawaii film office shall tentatively allocate credits based on the production costs reported in the estimated budget provided by taxpayers as part of the preproduction registration submitted to the Hawaii film office. Tentative allocation of credits is subject to the following rules:

- (1) Credits shall be tentatively allocated in the order of the date and, if necessary, the time that the preproduction registration required under section 18-235-17-03(a) and section 235-17(f), HRS, is received by the Hawaii film office;
- (2) The principal photography start date shall be within ninety days of the date of the letter sent by the Hawaii film office approving the preproduction registration and tentatively allocating the credit. Each production shall provide written notice of the actual principal photography start date to the Hawaii film office within thirty days

of starting principal photography. If the principal photography start date is after the ninety-day period described in this paragraph, the tentative allocation of credit shall be void; provided that a new preproduction registration may be submitted to the Hawaii film office in order to receive a new tentative allocation of credit;

- (3) Credits that cannot be tentatively allocated pursuant to paragraph (5) or (6) or because the aggregate cap is exceeded in any year, shall be allocated in the subsequent year in the manner described in paragraph (1);
- (4) Credits of \$500,000 or less described in subsection (e) shall have priority in tentative allocation before initial claim year claims and after any credits that were allocated under paragraph (3);
- (5) If the amount of credit applied for by a qualified production is \$2,500,000 or more, these credits shall be tentatively allocated over a two-year period; provided that no more than one-half of the credits applied for shall be allocated to the initial claim year, except as allowed under subsection (f); provided further that this paragraph shall not apply if the initial claim year is the last year that the credit is available under section 235-17, HRS;
- (6) For split-year productions, credits shall be tentatively allocated to the initial claim year and the subsequent year upon the approval of the preproduction registration for the initial claim year; provided that the requirements of this subsection are met for the initial claim year as if the production was not a split-year production; provided further that this paragraph shall

not apply to qualified productions that are subject to paragraph (5); and

- (7) If the amount of credit applied for in a production report exceeds the amount of credit that was tentatively allocated under this subsection, the difference shall be tentatively allocated in the subsequent year in the manner described in paragraph (1).

Tentative allocation required under this subsection shall not be interpreted to guarantee the amount of credit that is certified or may be claimed.

(d) The Hawaii film office shall certify credits in the same order that the credits were tentatively allocated under subsection (c). The amount of credits certified shall be based on the qualified production costs reported in the verification review of the qualified production. Except as allowed under subsection (f), the amount of credit certified under this subsection shall not exceed the amount of tentative allocation under subsection (c). Credits shall only be certified for taxpayers that have:

- (1) Received a letter from the Hawaii film office approving the preproduction registration;
- (2) Received a tentative allocation of credit under subsection (c); and
- (3) Submitted a timely production report.

Example 1:

LAT Productions is a calendar year taxpayer who submits a timely production report to the Hawaii film office but has not submitted a preproduction registration and has therefore not received a letter from the Hawaii film office tentatively allocating the credit. Although LAT Productions submitted a timely production report, the Hawaii film may not allocate any credits to LAT Productions because it did not receive a

preproduction registration approval letter which would have contained the tentative credit allocation. LAT Productions has waived its right to claim the credit under section 18-235-17-03(a).

Example 2:

CAL Productions is a calendar year taxpayer and submits its production report to the Hawaii film office on May 1, 2020. FIS Productions is a fiscal year taxpayer whose fiscal year begins on April 1 and ends on March 31. FIS Productions also submits its production report on May 1, 2020. The production report was due on March 30, 2020, ninety days after the end of the calendar year, for both taxpayers. Because a timely production report was not submitted by either taxpayer, both CAL Productions and FIS Productions have waived their right to the credit for the qualified production costs reported on the 2020 production report.

If the amount of credit applied for in a production report is twenty or more percent less than the amount of credit tentatively allocated under subsection (c) for that year, the Hawaii film office shall certify no more than one-half of the credit applied for in that year; provided that for credits subject to paragraph (c)(5), the Hawaii film office shall certify no more than one-fourth of the credit applied for in that year. The credits that were not certified pursuant to this provision shall be tentatively allocated in the subsequent year in the manner described in paragraph (c)(1). The Hawaii film office may waive the applicability of this provision if it finds that the estimated budget was made in good faith and that the reduction in the actual production

costs was due to circumstances beyond the taxpayer's control.

For the calendar year ending December 31, 2019, the Hawaii film office shall certify credits under this subsection based on the production report as if each taxpayer received a tentative allocation of credit. Credits shall be certified in the order that the preproduction registration was received by the Hawaii film office.

(e) Qualified productions that have a credit claim of \$500,000 or less shall have priority over initial claim year claims in tentative allocation under subsection (c) and certification under subsection (d); provided that such credits shall not have priority over credits allocated under paragraph (c) (3).

(f) The amount of credits certified for a taxpayer under subsection (d) shall not exceed the amount of credits tentatively allocated to that taxpayer under subsection (c); provided that if the aggregate cap is not reached for the calendar year, the remaining credits for the year may be certified for taxpayers who were not tentatively allocated the full amount of credits for the initial claim year pursuant to paragraph (c) (5) or (c) (7). Credits shall be certified under this subsection in the manner described in paragraph (c) (1).

For the calendar year ending December 31, 2019, the Hawaii film office and the department shall have discretion to determine the most efficient and appropriate method of allocation under this subsection. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

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

(b) If a qualified production incurs qualified production costs in two separate calendar 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 calendar year. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-06 Claiming the credit; timing; twelve-month rule. 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. The department has no authority to suspend or waive this provision. [Eff 11/17/2019] (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.

(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 production cost threshold. However, 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:

J3T 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, J3T Productions does not qualify for the tax credit and cannot claim the tax credit.

Example 2:

J3T Productions produces four productions throughout the taxable year, with each production incurring qualified production costs of \$75,000. For the entire taxable year, J3T 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, J3T Productions cannot claim the credit. This is true even though J3T 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 for the same production 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 18-235-17-03(b). The Hawaii film office will issue a certificate to the taxpayer certifying the amount of the qualified production costs for the prior year. 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 Example 1 under subsection (b), 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 totaling at least \$200,000, J3T 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 Example 1 under subsection (b), 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, J3T Productions cannot claim the tax credit. [Eff 11/17/2019] (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. However, 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 11/17/2019] (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 qualified production costs based upon the amount spent in each county if the population bases differ enough to change the percentage of tax credit. 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 county where the goods or services are 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:

J3T 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 J3T Productions 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:

J3T Productions purchases airfare to transport talent and crew from Honolulu to Kailua-Kona on the 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), J3T Productions must divide the total fare (\$1,000) in half (\$500 and \$500). Then, J3T 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). J3T 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 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-10 Qualified production costs; generally. (a) 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:

- (1) General excise tax at the highest rate under chapter 237, HRS, if the payee is engaged in business in the State; or
- (2) Income tax under chapter 235, HRS, if the costs are not subject to tax under chapters 237 and chapter 238, 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. J3T Productions contracts with ABC Airlines to transport its cast and crew from Los Angeles, California to Honolulu, Hawaii to shoot a motion picture. Although the cost of roundtrip airfare on ABC Airlines is not subject to general excise tax, it is a qualified production cost for purposes of the credit under section 235-17, HRS, because ABC Airlines 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 is engaged in business in the State and is therefore subject to general excise tax. J3T 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 J3T Productions is a qualified production cost for purposes of the credit under section 235-17, HRS, because the amount paid to 123 Catering is subject to general excise tax at the highest rate. J3T Productions must submit 123 Catering's general excise tax license number as part of the production report required under section 18-235-17-03(b).

Example 3:

J3T Productions, a California-based production company doing business in the State, ships filming equipment from California to the State to produce a commercial. J3T Productions contracts with two shipping companies: SlugShip, a same-day air travel parcel shipping company, to ship copies of the scripts, contracts, and costumes; and BugShip, 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 SlugShip and BugShip are qualified production costs on an apportioned basis to the extent that those amounts are subject to Hawaii income or general excise taxes.

Example 4:

Gus Grip, a resident of California, is hired as an employee by J3T 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, to

the extent earned in the State, are a qualified production cost.

Example 5:

Sam Staff, a resident of California, is a full-time employee of J3T Productions working out of J3T's California headquarters. J3T sends Sam Staff to work in the State temporarily. Sam Staff's wages that are earned while working in the State are a qualified production cost because the wages are subject to Hawaii income tax.

Example 6:

Molly Makeup is hired as an employee by J3T Productions to perform for the filming of a movie in the State. J3T Productions also agrees to rent Molly Makeup's kit box from her for \$1,000 per month. Molly Makeup's wages are qualified production costs because they are subject to Hawaii income tax to the extent they are earned in the State. The \$1,000 per month paid to Molly Makeup for the rental of her kit box is a qualified production cost because it is subject to general excise tax at the highest rate. J3T Productions must submit Molly Makeup's general excise tax license number as part of the production report required under section 18-235-17-03(b).

Example 7:

Assume the same facts as Example 6, except that J3T Productions treats the \$1,000 per month to rent Molly Makeup's kit box as additional wages to Molly Makeup and the amount is reported on Molly Makeup's Form W-2. The \$1,000 per month paid to Molly Makeup for the rental of her kit

box is a qualified production cost because it is subject to Hawaii income tax to the extent it is earned in the State.

Example 8:

Lenny Loaner, a resident of California, agrees to film a movie in the State for J3T Productions through the contracting of Lenny Loaner's loan-out company. J3T Productions pays fees to Lenny Loaner's loan-out company for services provided in the State that represent wages or salary for Lenny Loaner. The amounts paid to Lenny Loaner's loan-out company are qualified production costs to the extent that they are subject to general excise tax at the highest rate. J3T Productions must submit Lenny Loaner's general excise tax license number as part of the production report required under section 18-235-17-03(b).

Example 9:

J3T 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. J3T Productions 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 subject to general excise tax at the highest rate and therefore qualifies as a qualified production cost. J3T Productions must submit the church's general excise tax license number as part of the production report required under section 18-235-17-03(b).

(b) The cost of the verification review described in section 18-235-17-14 is a qualified production cost for the calendar year the verification review relates to regardless of the accounting method used by the taxpayer claiming the credit; provided that the cost is subject to general excise tax at the highest rate.

(c) Per diem payments are a qualified production cost if the per diem payments are subject to Hawaii income tax if paid by an employer to an employee or to general excise tax at the highest rate if the payee is not an employee.

Example 1:

Gus Grip, a resident of California, is hired by EFG Productions as an employee to film a movie in the State. EFG Productions pays Gus Grip wages and gives Gus Grip a per diem allowance that is subject to Hawaii income tax while working in the State. The amounts paid as per diem are qualified production costs to the extent that Gus Grip is subject to Hawaii income tax on the amounts received.

Example 2:

Assume the same facts as Example 1, except EFG Productions gives Gus Grip a per diem allowance that is not subject to Hawaii income tax. The per diem that Gus Grip receives is not a qualified production cost because it is not subject to Hawaii income tax.

Example 3:

George Grip, a resident of California, is hired by EFG Productions as an independent

contractor to film a movie in the State for a month. EFG Productions pays George Grip \$100,000 to perform services and \$30,000 per diem. George Grip's income and per diem are qualified production costs because the \$130,000 is subject to general excise tax at the highest rate. EFG Productions must submit George Grip's general excise tax license number as part of the production report required under section 18-235-17-03(b).

(d) Airfare is a qualified production cost subject to the following rules:

- (1) The airfare is to or from Hawaii or between the islands in the State;
- (2) The airfare does not include a scheduled layover that is twelve hours or longer; and
- (3) No more than \$2,000 per person per way shall be a qualified production cost.

(e) The credit may not be claimed for production costs if a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended. The basis for eligible property for depreciation of accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

(f) Qualified production costs shall not include any amounts paid to the taxpayer claiming the credit or any of taxpayer's related entities.

(g) Qualified production costs shall not include any amounts paid as gratuity or a tip.

(h) Qualified production costs shall not include costs for which another state or county's tax credit, rebate, or other incentive may be claimed.

(i) Qualified production costs shall not include any government-imposed fines, penalties, or interest incurred by a qualified production.

(j) No cost incurred shall qualify as a qualified production cost unless the cost is incurred for the specific production for which the credit under section 235-17, HRS, is being claimed.

Example:

XYZ Productions produced the feature film Papaya Dancing I in 2015 and filmed its sequel Papaya Dancing II in 2019. The main actor in both films is Richie Royal. During 2019, when Papaya Dancing II was being filmed, XYZ Productions pays Richie Royal residual income from Papaya Dancing I. The residual income paid to Richie Royal shall not be claimed as a qualified production cost of Papaya Dancing II because the residual income paid arises from Papaya Dancing I and is not incurred specifically for the production of Papaya Dancing II. [Eff 11/17/2019] (Auth: HRS §231- 3(9)) (Imp: HRS §235-17)

§18-235-17-11 Qualified production costs; credit calculation for certain equipment costs. (a) For equipment that is purchased for more than \$25,000 and specifically for use for a qualified production in the State, the amount that may be claimed as a qualified production cost in the first year the equipment is used for a qualified production shall be limited to the cost incurred for the equipment divided by the applicable recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service; 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.

Example:

XYZ Production Company purchased a camera to film an underwater scene of a feature film in Hawaii. The camera was purchased for \$60,000 and has a recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years. A deduction under section 179 of the Internal Revenue Code of 1986, as amended, was not taken with respect to the camera. The amount that may be claimed as a qualified production cost in the first year the equipment is used for a qualified production is \$12,000, which is the \$60,000 purchase price divided by the applicable recovery period of 5 years.

(b) For equipment that a taxpayer owned prior to beginning production in the State or that a taxpayer has previously claimed qualified production costs for a qualified production in the State and that has an applicable recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years or more, the

taxpayer may claim the amount of the depreciation allowance as a qualified production cost. The amount claimed as a qualified production cost shall be prorated to reflect the amount of time that the equipment is actually used during the calendar year; 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 under state law shall be utilized to calculate the credit amount under this section.

Example 1:

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 have an applicable recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years 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. If XYZ Production Company is entitled to take a \$1,000 state depreciation allowance for the cameras for the calendar year, XYZ Production Company may claim \$500 as a qualified production cost that represents the \$1,000 depreciation allowance adjusted for the time the cameras were used in the State.

Example 2:

XYZ Production Company purchased a camera to film an underwater scene of a feature film in Hawaii. The camera was purchased for \$60,000 and has a recovery period under the modified accelerated cost recovery system determined by the Internal Revenue Service of 5 years. A deduction under section 179 of the Internal Revenue Code of 1986, as amended, was not taken with respect to the camera. The amount that may be claimed as a qualified production cost in the first year the equipment is used for a qualified production is \$12,000, which is the \$60,000 purchase price divided by the applicable recovery period of 5 years. In the subsequent year XYZ Production uses the camera for the qualified production for six months of the year. XYZ Production is entitled to a \$10,000 state depreciation allowance for the camera. XYZ Production may claim \$5,000 as a qualified production cost that represents the \$10,000 depreciation allowance adjusted for the time the camera was used in the State. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-12 Qualified production costs; imported goods, services, or contracting subject to the use tax; claim for products or services acquired outside of this State. (a) In order 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 tax on the use in the State of tangible personal property, services, and contracting imported into the State under Hawaii use tax law, codified at chapter 238, HRS.

(b) Importation of goods, services, or contracting into the State from a seller that is not engaged in business in the State, for use in the State, is subject to chapter 238, HRS, capturing the general excise tax equivalent. Because chapter 238, HRS, is a substitute for Hawaii general excise tax, production costs incurred by a qualified production in the State that would otherwise qualify as qualified production costs if subject to the general excise tax at the highest rate, are considered "qualified production costs" under section 235-17(m), HRS, and section 18-235-17-10; provided that the production costs are subject to use tax at the highest rate.

Example:

Steve Screenwriter, a resident of California with no physical presence in the State, is an author and screenplay writer. EFG Productions, a Hawaii limited liability company, intends to shoot a movie in the State. Steve Screenwriter sells his screenplay to EFG Productions for \$99,999. Assuming that Steve Screenwriter has no other Hawaii sourced business income and is therefore not engaged in business in the State, the cost of Steve Screenwriter's screenplay is subject to use tax. The amount paid to Steve Screenwriter is a qualified production cost

provided that it is subject to use tax at the highest rate, the cost is incurred in the calendar year for which EFG Productions is claiming the credit, and EFG Productions is able to substantiate the payment of the use tax due as required by section 18-235-17-03(b) (6).

(c) This section shall not apply to any costs incurred by a qualified production and paid to a seller that is engaged in business in the State and therefore subject to general excise tax.

(d) 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 the State when making any claim for products or services acquired outside of the State. To satisfy section 235-17(d) (5), HRS, 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 the State were unsuccessful. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-13 Qualified production costs; premiums paid to insurers subject to tax under chapter 431, 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. 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:

J3T Productions is filming a qualified production in the State and pays insurance premiums to BDDF Insurance Company, which is doing business in the State, for insurance on J3T Productions' activities and property associated with the qualified production. The insurance premiums J3T Productions pays to the insurance company are qualified production costs. J3T Productions must submit BDDF's insurance license number as part of the production report required under section 18-235-17-03(b).

Example 2:

J3T 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 J3T Productions' activities. The insurance premiums J3T Productions pays to DEED Insurance Company are presumed not subject to chapter 431, HRS, and not qualified production

costs. [Eff 11/17/2019] (Auth: HRS §231-3(9))
(Imp: HRS §235-17)

§18-235-17-14 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 18-235-17-03(b), no later than ninety days following the end of the calendar year in which the qualified production costs were incurred.

(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 18-235-17-03(b), no later than ninety days following the end of the calendar year in which the qualified production costs were incurred.

(b) A "verification review" is an agreed-upon procedures report prepared by a qualified certified public accountant. The agreed-upon procedures report, must:

- (1) Verify that the production has obtained a preproduction registration approval letter and tentative allocation of credit under section 18-235-17-04(c) from the Hawaii film office;
- (2) Evaluate the taxpayer's assertion of the amounts proposed as qualified production costs within the meaning of section 235-17, HRS, for the calendar year;
- (3) 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;
- (4) Verify that the production report to be submitted to the Hawaii film office complies with section 18-235-17-03(b);
- (5) Separately state any costs that were deemed not qualified production costs; and
- (6) Separately state the total of qualified production costs for which no exceptions were noted.

(c) The department, in consultation with the Hawaii film office, shall issue a Tax Information Release specifying the procedures by which the agreed-

upon procedures report shall be prepared by the qualified certified public accountant.

(d) There is no requirement that the preparation of the verification review start after the end of the calendar year. The process of preparing the verification review may begin after production is completed or if no further production costs will be incurred for the calendar year.

Example 1:

XYZ Productions finishes the filming of its feature film on July 31, 2019. The qualified certified public accountant that XYZ Productions retains may begin the preparation of the verification review on August 1, 2019 because the filming of the feature film was completed on July 31, 2019.

Example 2:

Assume the same facts as Example 1, except that XYZ Productions' feature film is a split-year production, filming in calendar year 2019 will stop on November 30, 2019, and filming will be completed in March of 2020. The qualified certified public accountant that XYZ Productions retains may begin the preparation of the 2019 verification review on December 1, 2019 because the filming of the feature was stopped for calendar year 2019 on November 30, 2019.

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

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

(g) The cost of the verification review shall be the responsibility of the taxpayer; provided that it may be claimed as a qualified production cost as described in section 18-235-17-10(b).

(h) Inclusion of a verification review with the production report does not preclude the department from auditing and adjusting the tax credit amounts claimed. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17; SLH 2017, Act 143, §6)

§18-235-17-15 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; or
- (2) If it is not feasible to include an end credit as required under paragraph (1), 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 prior to public release of the qualified production.

(c) Failure to submit the documentation required under subsection (b) may result in the disallowance of the credit under section 235-17(d), HRS. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-16 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 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-17 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 to multiple qualified entities.

(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 for purposes of claiming the tax credit under section 235-17, HRS.

(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 or media 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 or media 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; and
- (5) Any other financial or in-kind contributions or any other educational or workforce development approved by the Hawaii film office. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-18 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 contractor, vendor, loan-out company, or other agent providing goods or performing services in the state that does not have a general excise tax license 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 calendar days after engaging the 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, and 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.

Taxpayers 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 was provided to the contractors, vendors, loan-out companies, or other agents, as required under subsection (a), not later than thirty calendar days after engaging such parties. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

§18-235-17-19 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 location. 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, but shall not be limited to, Hawaii film office personnel; department personnel; state and county film commissioners; and legislators.

(b) All taxpayers submitting a production report to the Hawaii film office shall hold 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 exercise of its subpoena power as otherwise allowed. [Eff 11/17/2019] (Auth: HRS §231-3(9)) (Imp: HRS §235-17)

DEPARTMENT OF TAXATION

Chapter 18-235, Hawaii Administrative Rules, was adopted on November 17, 2019, following public hearing held on October 14, 2019 after public notice was given in the Honolulu Star Advertiser, the Garden Isle, the Maui News, West Hawaii Today, and the Hawaii Tribune-Herald on September 13, 2019.

These amendments to chapter 18-235 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/Rona M. Suzuki/s/
RONA M. SUZUKI
Director of Taxation

APPROVED:

/s/David Y. Ige/s/
DAVID Y. IGE
Governor
State of Hawaii

Dated: 11-07-2019

APPROVED AS TO FORM:

/s/Cynthia M. Johiro/s/
Deputy Attorney General