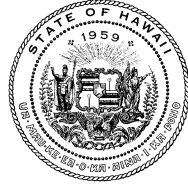


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February 16, 2021

DEPARTMENT OF TAXATION INFORMATION RELEASE NO. 2021-01

RE: General Excise Tax Imposition on the Film Industry

The purpose of this Announcement is to provide information on the general excise tax (GET) imposition on the film industry.

BACKGROUND

The Department of Taxation (Department) issued Tax Information Release (TIR) No. 2009-05 on September 17, 2009. One of the issues covered in TIR 2009-05 was the imposition of GET on the film industry. Specifically, through a proposed administrative rule contained in TIR 2009-05, the Department set forth its position: “[a] motion picture or television film production company is considered to be in the business of manufacturing for Hawaii general excise tax purposes under chapter 237, HRS. . .” Under section 237-13(1), Hawaii Revised Statutes (HRS), taxpayers in the business of manufacturing are subject to GET at a rate of one-half percent.

In TIR 2009-05, the Department also deemed loan-out¹ entities providing services to production companies to be engaged in *service business* under section 237-13(6), HRS. Taking these two Department positions together administratively allowed the loan-out entities to be subject to GET at the one-half percent rate. It is important to note that the Department did not begin the formal rulemaking process on the proposed administrative rules contained in TIR 2009-05. Therefore, those proposed administrative rules did not become law.

CURRENT POSITION

On April 5, 2019 the Department revoked TIRs 2006-02, 2008-03, 2009-05, and 2010-04, effectively withdrawing its positions contained in those TIRs. The Department received confirmation from the Hawaii Film Office on April 10, 2019 that it had likewise removed our TIRs from its website. The Department promulgated new administrative rules under chapter 91, HRS, which became effective November 19, 2019.

¹ TIR 2009-05 defined “loan-out” to mean “a wholly-owned entity formed on behalf of an actor, performer, director, producer, or other “above the line” cast or crewmember of a motion picture production, which serves as a separate entity that constitutes the individual’s means of contracting with a motion picture production for services rendered by the “above-the-line” individual.”

Prior to April 5, 2019, the Department reviewed its position on deeming a motion picture or television film production company to be engaged in the business of manufacturing. Through this review, the Department determined that this prior position was inappropriate. This determination led to the revocation of the TIRs, including TIR 2009-05, and the promulgation of section 18-235-17-10, Hawaii Administrative Rules, which requires a cost incurred by a qualified production to be subject to GET at the four percent rate in order to qualify for the Film Credit.²

The Department's position since the revocation of the TIR 2009-05 is that a motion picture or television film company is **not** engaged in the business of manufacturing. As a result, loan-out entities providing services to a production company are **not** eligible for the one-half percent GET rate. Loan-out entities are therefore subject to GET at the retail rate of four percent.

The foregoing is the Department's position under current law. It is subject to change at the Department's discretion or because of a future change in law. The Department notes that it was not able to find any measures addressing the issues discussed in this TIR introduced during the 2020 or 2021 Regular Session of the Hawaii State Legislature.

If you have any questions, you may contact the Department of Taxation Rules Office at tax.rules.office@hawaii.gov, or call (808) 587-1530.

ISAAC W. CHOY
Director of Taxation

² Motion Picture, Digital Media, and Film Production Income Tax Credit. HRS §235-17.