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February 16, 2021

# HAWAII TAX ADVISORY

## TAX OBLIGATIONS OF PERSONS WORKING IN THE MOTION PICTURE, TELEVISION, AND FILM PRODUCTION INDUSTRY

The purpose of this Tax Advisory is to provide notice of tax obligations to persons engaged in the motion picture and television film production industry in Hawaii. Any taxpayer claiming the motion picture, digital media, and film production tax credit must provide this advisory to all persons involved in their productions, including actors, directors, writers, producers, crew members, and others who conduct activities in Hawaii as an employee, vendor, independent contractor, or loan-out company.<sup>1</sup>

### INCOME TAX OBLIGATIONS

W-2 Employees: Wages earned while working in Hawaii as an employee are subject to Hawaii income tax, *regardless of residency*. This includes wages earned from performing services in Hawaii.

1099 Independent Contractors and Loan-Out Companies: Income earned from services performed in Hawaii, or from otherwise conducting business as an independent contractor or loan-out company in Hawaii, is likewise subject to Hawaii income tax. Income earned from performing services in Hawaii is subject to income tax *regardless of residency*.

Royalties Exclusion: In certain circumstances, income received as royalties and other income derived from patents, copyrights, and trade secrets is excluded from income tax.<sup>2</sup>

Relevant Forms: Income tax must be reported and remitted on the proper income tax form. For individual taxpayers, residents file Form N-11 and nonresidents or part-year residents file Form N-15. Corporations file Form N-30 and S-Corporations file Form N-35. Partnerships and multi-member limited liability companies file Form N-20. Please see the applicable form instructions for a detailed explanation of how to fill out each form as well as information about other forms or schedules that may need to be filed. Forms and instructions can be found on the Department of Taxation website at <http://tax.hawaii.gov/forms/>.

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<sup>1</sup> § 18-235-17-18, Hawaii Administrative Rules (HAR).

<sup>2</sup> § 235-7.3, Hawaii Revised Statutes (HRS). See also § 18-235-17-10(j), HAR.

## GENERAL EXCISE TAX OBLIGATIONS

Hawaii levies a gross receipts tax called the general excise tax (GET) on the gross income of any taxpayer who is engaged in business in Hawaii. Generally, GET is imposed at a rate of 4% of all gross proceeds or gross income received from being engaged in business in Hawaii. In addition to the 4% rate, in the City and County of Honolulu, Kauai County, and Hawaii County a GET county surcharge (CS) of 0.5% applies.

It is important to note that under previously-issued guidance, the Department deemed a motion picture or television production company to be engaged in the business of manufacturing. As explained in Tax Information Release (TIR) 2021-01, the Department has rescinded this guidance. Production companies are **not** engaged in the business of manufacturing, therefore, loan-out entities are **not** eligible of the 0.5% GET rate. Please see TIR 2021-01 for more details.<sup>3</sup>

A taxpayer that has a physical presence in Hawaii is engaged in business in Hawaii. A taxpayer that does *not* have a physical presence in Hawaii is deemed to be engaged in business in Hawaii if the taxpayer has \$100,000 or more of gross sales receipts *or* if 200 separate transactions are properly sourced to Hawaii.<sup>4</sup> The sale of goods (tangible property) is sourced to Hawaii and subject to GET if the property is delivered to a destination in Hawaii.<sup>5</sup> The sale of intangible property is sourced to Hawaii if the intangible property is used in Hawaii.<sup>6</sup> Services are sourced to Hawaii and subject to GET if the service is used and consumed in Hawaii.<sup>7</sup>

Please note that Hawaii law requires taxpayers to register for a GET license **prior to engaging in business** in Hawaii. 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.<sup>8</sup>

1099 Independent Contractors and Loan-Out Companies: Services or other business activities performed for a production company in Hawaii are subject to the GET.

W-2 Employees: Wages paid by an employer to an employee are *not* subject to GET. However, non-employee compensation, such as income reported on Form 1099-NEC (formerly Form 1099-MISC), *is* subject to GET.

Relevant Forms: A GET license is obtained from the Department by submitting Form BB-1 with a one-time \$20 payment. GET is reported and remitted by filing periodic returns (Form G-45), followed by filing an annual reconciliation return (Form G-49) after the end of the tax year. Please see the applicable form instructions for a detailed explanation of how to fill out each form as well as information about other forms or schedules that may need to be filed.

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<sup>3</sup> <https://files.hawaii.gov/tax/legal/tir/tir21-01.pdf>

<sup>4</sup> § 237-2.5, HRS.

<sup>5</sup> § 237-29.5, HRS.

<sup>6</sup> § 237-29.57, HRS.

<sup>7</sup> § 237-29.53, HRS; §§ 18-237-29.53-01 to 13, HAR.

<sup>8</sup> § 237-9(c), HRS.

Forms and instructions can be found on the Department of Taxation website at <http://tax.hawaii.gov/forms/>.

Taxpayers may register, file and pay GET online through Hawaii Tax Online at <https://hitax.hawaii.gov>.

#### PENALTIES FOR NONCOMPLIANCE

The penalty for failure to file a tax return by the deadline is 5% of the unpaid tax per month, up to a maximum of 25%. The penalty for failure to pay the tax within 60 days of timely filing a return is 20% of the unpaid tax. If the failure to pay tax is due to fraud, the penalty is up to 50% of the unpaid tax. The interest on nonpayment of tax or underpayment of tax accrues at a rate of two-thirds of 1% per month.<sup>9</sup>

#### CONTACT A TAX PROFESSIONAL

The Department of Taxation strongly 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

Website: [tax.hawaii.gov](http://tax.hawaii.gov)  
Email: [tax.rules.office@hawaii.gov](mailto:tax.rules.office@hawaii.gov)  
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