
May 2, 1939.

OPINION NO. 1703

TAXATION, GROSS INCOME; NON-
PROFIT CORPORATIONS, TAXA-
BILITY OF.

The East Maui Irrigation Co. Ltd., incorporated as a joint stock company under Chapter 221, R. L. 1935, is subject to the gross income tax although its receipts never exceed its operating expenses.

Honorable Wm. Borthwick,
Tax Commissioner,
Territory of Hawaii,
Honolulu, T. H.

Sir:

This is in reply to your letter of April 19 with rela-

tion to the East Maui Irrigation Co. Ltd. I am of the opinion that this company is liable to gross income tax upon the receipts from the sale of water, regardless of the fact that such receipts are in the amount of the operating expenses.

You state that the company contends (1) that it is in the nature of a mutual or cooperative association not operating as an enterprise for profit, and (2) that it has no gross income.

It appears from the records in the Treasurer's office that this company was incorporated in 1908 as a joint stock company under Chapter 157, R. L. 1905 which is now Chapter 221, R. L. 1935. The Articles of Association show that it was formed to acquire the water system and rights of the Maui Agricultural Company and the Hawaiian Commercial and Sugar Company, and to build, maintain and operate a system of irrigation and water supply. Immediately upon the enactment of Act 124, L. 1911 (secs. 70-74, R. L. 1935) the company extended its capital stock for the purpose of qualifying for exercise of the right of eminent domain under said law. At that time reference was made to the Articles of Association as showing that the company came within the Purview of said law. The capital stock has been extended from time to time until now and for the past several years the outstanding paid up capital stock has been \$1,427,000, and the paid in surplus has been \$901,927.06. Practically all of the stock is owned by the aforesaid two companies.

The annual exhibits bear out the statement that the operating expenses of the company exactly balance the receipts. You state that the company is operating an irrigation system for the benefit of its two principal stockholders, and that the cost of water to them is the amount of operating expenses, divided between them in proportion to their stock holdings. These receipts (or operating expenses) over the past several years

have been between \$285,000 and \$315,000 in round figures.

The Act does not contemplate that the taxpayer shall make a profit to be taxable or even that he shall endeavor to make a profit. It is specifically provided that: "‘Business’ as used in this Act, shall include all activities (personal, professional or corporate), engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, but shall not include casual sales." (Sec. 1 [7], Act 141, L. 1935.) The operation and management of property with the object of meeting taxes, rents, and the expenses of operation certainly is "with the object of * * * economic benefit * * * direct or indirect". Moreover, even if it were necessary to find that the East Maui Irrigation Company was organized for profit such finding could be made. It is well recognized that a corporation engaged in assisting other corporations affiliated in stock ownership in their business, is engaged in business for profit. *Edwards v. Chile Copper Co.*, 270 U. S. 452.

No question of disregard of corporate entity can arise. The company has been organized and maintained as a separate corporation for the benefits to be derived therefrom, for example, enjoyment of the power of eminent domain. The company is not a mere conduit of title to the water rights as can be seen from its annual exhibits.

Act 141, L. 1935 specifically exempts certain persons, for example: "Business leagues, chambers of commerce, boards of trade, civic leagues and organizations operated exclusively for the benefit of the community and for the promotion of social welfare, and from which no profit inures to the benefit of any private stockholder or individual" (sec. 4 [1] [h]); and "Cooperative associations now or hereafter incorporated under and pursuant to the provisions of the Revised Laws of Hawaii 1935, Chapter 220; provided, how-

ever, that the exemption herein provided shall apply only to the gross income derived from its non-profit activities" (sec. 4 [1] [j]). The plain intent of the law is to tax business from which a profit inures to the benefit of any private stockholder or individual with the exception of corporations organized under Chapter 220, R. L. 1935.

With respect to the contention that the company has no gross income, it is sufficient to quote the definition of "Gross Income" contained in section 1 (6) of the Act: "‘Gross income’ means * * * the gross receipts of the taxpayer derived from trade, business, commerce or sales * * * without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, interest or discount paid or any other expenses whatsoever. * * *"

Very truly yours,

RHODA V. LEWIS,
Deputy Attorney General.

APPROVED:

J. V. HODGSON,
Attorney General.
