



TERRITORY OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
HONOLULU

45

August 28, 1942

OPINION NO. 1824

TAXATION: GROSS INCOME TAX (ACT 141, L. 1935); INTERSTATE COMMERCE; DUE PROCESS OF LAW.

Upon consideration of facts submitted as to a sale made by a local merchant to the United States, it is the opinion of the Attorney General that the sale was a transaction localized within the State of California under Department of Treasury v. Wood Preserving Corp., 313 U.S. 62, and the proceeds thereof are not subject to the Territory's tax.

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

Dear Sir:

You have requested our opinion as to whether or not there should be included in the measure of the gross income tax imposed by Act 141, L. 1935, as amended, the proceeds of a sale under the following circumstances.

Bailey Furniture Company, Ltd. entered into a contract at Honolulu on January 23, 1942 wherein it agreed

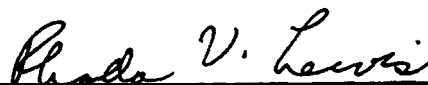
to sell certain beds, springs and other furniture to the United States. The Contracting Officer, representing the United States, was the Supply Officer, U. S. Navy Yard, Pearl Harbor, T. H., and payment was made on invoices submitted to him. The contract specified that the goods were to be delivered to the Navy Overseas Freight Terminal, San Francisco. It was agreed that the goods would be inspected at the places of manufacture in California by an Inspector of Navy Material and acceptance would be subject to such inspection. It further was provided that said Inspector of Navy Material would issue a government bill of lading to cover the shipment from San Francisco to Hawaii. The seller contends that once the goods were accepted by the Inspector of Navy Material and reached the Navy Terminal at San Francisco the seller had no further responsibility, and though the goods were marked at the Navy's direction for reshipment to Pearl Harbor, their further movement from the Navy Terminal, San Francisco, was entirely handled by the Navy; that in some instances goods originally intended for Pearl Harbor have been sent by the Navy to other destinations. These contentions apparently are accepted by you as correct statements of fact.

In my opinion these facts lead to the conclusion that the sale was a transaction localized within the State of California, the entire proceeds of which could be taxed in California, under the holding in Department of Treasury v. Wood Preserving Corporation, 313 U. S. 62; and in accordance with our opinion of July 18, 1939, No. 1717, and our two opinion letters of September 30, 1940 (No. 1289) and July 28, 1942 (No. 932), summarized in our opinion of July 29, 1942, No. 1822, such a sale cannot be included in the measure of the Territory's tax.


The non-taxability in this instance is due to lack of taxing jurisdiction, and not to the fact that the sale is to the United States. See Ops. Att'y Gen. (1941) No. 1792.

You have also referred to this office inquiries from certain other sellers; these have not been considered because of insufficient facts.

Respectfully,

  
RHODA V. LEWIS  
Deputy Attorney General

APPROVED:

  
Ernest Z. Z...  
Attorney General