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Op. 56-110

October 29, 1956

Honorable Earl W. Fase
Tax Commissioner
Territory of Hawaii
Honolulu, Hawaii

Attention: Mr. Bell

Dear Sir:

This concerns the application of the gross income tax to the proceeds received by a cooperative ownership housing corporation engaged in a sales type project under Section 213, National Housing Act.

The matter was orally presented at our conference of October 25, 1956 and I understand the facts to be substantially as follows:

A corporation will be formed with such number of stockholders as have qualified for FHA mortgage insurance. For example, there might be twenty stockholders whose credit was satisfactory to the FHA as qualifying them to become the mortgagors of homes which are to be built for them as below outlined.

Each stockholder will buy his stock under an agreement that when the house is built the stock will be surrendered as partial payment for the house and the balance either paid in cash with the stockholder doing his own financing or else through an FHA-type mortgage.

When the project has been set up the corporation will enter into a building contract and a blanket mortgage.

Each stockholder will have selected his lot prior to entering into participation in the project. In effect his participation in the project is a means by which he uses his credit to obtain the construction of a home on the selected lot under Section 213 of the National Housing Act.

During construction the corporation will hold a master lease on the entire project. When all of the homes have been

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completed to the satisfaction of the corporation and the FHA, the corporation will liquidate, receiving from each stockholder the surrender of his stock and the payment of the balance as above stated and transferring to the stockholder the leasehold of his individual lot.

Confirming the advice given you at our conference, it is my view that the corporation should be treated as a person engaged in the business of contracting within the meaning of subsection C of section 5455, and the builder with whom the corporation contracts should be considered a subcontractor. The corporation should return the entire price of the homes less the amount deductible by reason of the builder, as subcontractor, having paid gross income tax thereon.

Very truly yours,

RHODA V. LEWIS
Deputy Attorney General