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Op. 56-99

September 18, 1956

Mr. Edward Stanwood  
Bouslog & Symonds  
Kauai Branch  
Box 247  
Lihue, Kauai, T. H.

Dear Sir:

This is in reply to your letter of September 7, 1956 concerning the applicability of the net income tax imposed by chapter 102 in respect of wages earned on Guam by residents of Hawaii.

The period involved is subsequent to January 1, 1951 when Section 31 of the Organic Act of Guam took effect (Act of August 1, 1950, 64 Stat. 392, c. 512, s. 31).

Section 31 of the Organic Act of Guam has been interpreted as creating a territorial Income tax, to be collected by the proper officials of the government of Guam. The Internal Revenue Code is applicable on Guam, but imposes a Guamanian tax. Laguana v. Ansell, 102 F.Supp. 919, aff'd 212 F.2d 207, cert. denied 348 U.S. 830; Government of Guam v. Kaanehe, 124 F.Supp. 15.

Section 5505 of chapter 102, R.L. 1945 as amended provides that the gross income from which the tax imposed by that chapter is computed includes wages and all other kinds of compensation "attributable to personal services \* \* \* performed without the Territory by a resident of the Territory and not subjected to income tax in any other jurisdiction (other than for federal tax)". There also is a provision as to personal services performed "in the course of a local employment as defined in section 5501; this latter provision has to do with services incidental to a local employment though performed outside the Territory. This latter provision is not the subject of this letter.

Since the taxability of the wages earned by personal services performed outside the Territory by a resident of the Territory, not in the course of a local employment, depends upon whether the wages have been "subjected to income tax in any other jurisdiction (other than for federal tax)" the taxability of the wages turns upon whether they have been subjected to the Guamanian income tax.

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I have discussed this with the appropriate bureau head in the tax office here who tells me this is the conclusion already reached by the tax office. However there may be ramifications which the Kauai office would like to take up with the Honolulu office. You should pursue this matter further through the Kauai office.

Yours very truly,

RHODA V. LEWIS  
Deputy Attorney General

cc: Tax Commissioner