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TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

Op. 57-89

August 23, 1957

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

Dear Sir:

This is in reply to your letter of August 21, requesting our opinion as to the taxability of jet fuel under the fuel tax law, chapter 123, Revised Laws of Hawaii 1955, between now and July 1, 1959, which is the effective date of the amendments made by Act 217, S. L. 1957.

As the law stands today and without the taking effect of the Act 217 amendments the term "liquid fuel" includes "all liquids ordinarily, practically and commercially usable in internal combustion engines for the generation of power". Jet fuel comes within this definition even if it is not gasoline.

If jet fuel is not gasoline, then even though it is "sold for use in or used for airplanes" the tax falls under paragraph (3), (4), (5) or (6) of section 123-3(a), taking the rate applicable to "liquid fuel other than fuel mentioned in items (1) and (2)", that is, 8 1/2¢ in the City and County of Honolulu and the varying rates in other counties.

If jet fuel is not gasoline, the the tax thereon is distributed between the county highway fund and the territorial highway fund, and does not go into the territorial airport fund. This is due to the fact that as the law presently stands, in order for the tax to be deposited in the airport fund it must be "in respect to gasoline sold for use in or used for airplanes" pursuant to section 129-11, and therefore must be a tax on gasoline.

Therefore at the present time it is necessary to determine as to the various types of jet fuel whether any of them constitute gasoline within the meaning of the law. If they do the rate is 3 1/2 cents and the tax goes into the territorial airport fund. If they do not the rate is higher and the tax goes into the highway funds.

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According to my recollection, a representative from your office was present when this situation was discussed with representatives of the Airport Users Association during the Regular Session of 1957. The Airport Users were informed that the above was our interpretation of the law as it presently stands. The position of the Airport Users was that there would be no significant use of jet fuel prior to July, 1959.

It is suggested that you contract the oil companies to see whether they wish to submit further information concerning the classification of the various types of jet fuels, that is, as to whether they are gasoline or not.

Respectfully,

(S) Rhoda V. Lewis

RHODA V. LEWIS
Deputy Attorney General