

OP. 57-92

September 3, 1957

Mr. Charles J. Gillespie
Deputy Bank Examiner
Territory of Hawaii
Office of Bank Examiner
Honolulu, Hawaii

Dear Sir:

This will acknowledge receipt of your letter of August 30 enclosing a copy of a letter from an industrial loan co any licensed under Chapter 194, Revised Laws of Hawaii 1955.

The loan company's letter states:

"The last Legislature passed a law which permits the retail merchants to pass the 3 1/2% Gross Income Tax on the purchaser. In your opinion, is it permissible for Industrial Loan Companies to add the 3 1/2% to the loan, provided that it is shown in the statement of the customer?

"This 3 1/2% will be based strictly on the interest that we would charge the customer."

The answer to this question is that it is not permissible for the loan company to add anything on account of the tax unless it lawfully could increase the interest rate itself.

The quoted statement that the 1957 Legislature passed a law which permits the retail merchants to pass the 3 1/2% gross income tax on to the purchasers is based on a misconception. Enclosed is a copy of General Excise Tax Memorandum No. 4 issued by the Tax Commissioner on July 3, 1957. Upon comparison of this memorandum with another issued by the Tax Commissioner July 1, 1949, it appears that no substantial change has been made in the 1957 law concerning the nature of the "visible pass-on" of the general excise tax. Whether or not there is a separate statement of the amount of the tax it remains, as it was before, a part of the price or in this case a part of the interest charged.

Also enclosed herewith is a copy of a letter of September 8, 1947, which is equally applicable under the law as it stands today.

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Whether the interest rates may be increased of course depends upon the terms of the loan agreement and the provisions of chapter 194. Assuming that the interest charge already is at the maximum permitted by the loan agreement and chapter 194, there is nothing in the tax law which permits an addition to this maximum.

Very truly yours,

RHODA V. LEWIS
Deputy Attorney General

Encls.

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