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TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

July 7, 1958

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

Attention: Mr. James I. Nishikawa
Asst. Tax Commissioner

Dear Sir:

Reference is made to your request for an opinion as to the application of the Income Tax Law of 1957 where a partnership is on the fiscal year basis and each of the members of the partnership is on the calendar year basis.

This question concerns the calendar year 1958. For the members of the partnership, this is a taxable year in which there ended the fiscal year of the partnership which commenced in 1957 and ended in 1958.

Under section 706 of the Internal Revenue Code, which is applicable under section 121-25, in computing his taxable income for the calendar year 1958 a partner must include the income of the partnership for the fiscal year ending in 1958. This also is specifically provided by section 121-15 of the Income Tax Law of 1957. As 1958 income of the partners this income is subject to the 1958 rates.

The foregoing relates to the year in which the partnership income is to be accounted for by the partners. However there still remains the question as to how the partnership income is to be computed.

For example, suppose that in 1957, within the fiscal year of the partnership which begins in 1957 and ends in 1958, a partnership received a capital gain on stock. This was not taxable under the Income Tax Law of 1932 but is taxable under the Income Tax Law of 1957. What is the result?

A partnership is not a taxpayer. "Taxpayer" is defined by section 121-1, 21st paragraph, as meaning a person subject to a tax imposed by chapter 121. Under section 121-15 a partnership as such is not subject to the income tax.

While a partnership is not a "taxpayer" it does have a taxable year and does have taxable income for the purpose, and the sole purpose, of determining the taxable income of the individual partners. Section 7069(b) of the Internal Revenue code provides that the taxable year of a partnership shall be determined as though the partnership were a taxpayer, and section 703(a) provides that, with some exceptions, the taxable income of a partnership shall be computed in the same manner as in the case of an individual, that is, the same as in the case of a taxpayer. Section 121-29 provides that each partnership shall make a return and except as otherwise stated "all provisions of this chapter relating to returns shall be applicable to partnership returns".

Since the computation of the amount of taxable income of each partner depends upon the determination of the taxable income of the partnership for its fiscal year and for this purpose the partnership must make a return, the question arises as to whether the partnership may make two returns under section 19(a) for the fiscal year 1957-1958, computing the partnership income on the first of the returns under the old law and thereby eliminating such items as the capital gains in the hypothetical case above presented. We have reached the conclusion that this may be done. If this is done the return of each individual partner for 1958, while it will include the full share of the partnership fiscal year's income at the 1958 tax rates, will carry into the return the computations under the old law of the share of the partnership income for the fractional part of the calendar year 1957 included in the fiscal year of the partnership.

Respectfully,

Rhoda V. Lewis

RHODA V. LEWIS
Deputy Attorney General

APPROVED:

Herbert Y. C. Choy

HERBERT Y. C. CHOY
ATTORNEY GENERAL