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TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

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Op. 58-17

January 21, 1958

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

Attention: Mr. J. A. Bell, Deputy Tax Commissioner

Dear Sir:

This is in response to your request for an opinion as to whether interest received by the Estate of Samuel Mills Damon from the sales of land made in 1956 and 1957 under agreement of sale is subject to the general excise tax imposed by Chapter 117 of the Revised Laws of Hawaii 1955.

The answer to the question depends on: (1) Whether such interest constitutes "gross income" within the meaning of Sec. 117-3, R.L.H. 1955, which defines "gross income" as including interest received "by reason of the investment engaged in" and (2) whether the interest is gross income of a "business" defined by Sec. 117-2.

We are of the opinion that interest received under agreements of sale of land is not taxable unless the taxpayer is engaged in financing or putting money out at loans or is active in the investment field, in which event such interest would be either interest derived from the investment of capital of the business or income from the business of the taxpayer. See Laing v. Fox, 173 S.E. 354 (W. Va., 1934), which held interest from loans and investments to be income of a business under a West Virginia statute similar if not identical to Sec. 117-2, R.L.H. 1955. See also Op. Let. Attny. Gen. dated May 23, 1952 (45:1104), distinguishing an ordinary trust estate from a corporation.

You should also consider whether the term for the liquidation of the purchase price is one usual in agreements of sale of land or is for such an extended period as to make the transaction an investment of capital. This is material in determining the diversity of investments and the extent of the estate's activity in that regard.

Very truly yours,



NOBUKI KAMIDA
Deputy Attorney General
Territory of Hawaii

Approved:



HERBERT Y C. CHOY
Attorney General