



DEPARTMENT OF TAXATION

STATE OF HAWAII

July 28, 1971

TAX INFORMATION RELEASE NO. 35-71

(ITOM 47)

RE: Section 237-26--Application of the General Excise Tax to Certain
"Scientific Contracts" and "Tangible Personal Property" Furnished
in Connection Therewith

This tax information release relates to Section 237-26, HRS, as amended by Act 180, L. 1970, effective January 1, 1971 and supersedes TIR No. 19-68 of November 20, 1968.

Section 13, Part II of Act 180, L. 1970 amended Section 237-26 by exempting subcontractors involved in scientific contracts with the United States and the sales of tangible personal property to such subcontractors and broadening the scope of maintenance and operational activities deemed exempt from the tax.

In accordance with the purpose of Section 13, Part II of Act 180, L. 1970 and to provide for uniform interpretation and application of Section 237-26, as amended, the following specific questions and answers are presented to illustrate the circumstances under which contracts or subcontracts and tangible personal property furnished or imported in conjunction with the performance of any scientific contract with the United States would be exempt. It should be noted, however, that the exemption provided by Section 13, Part II, Act 180, S.L. 1970 shall not apply to gross proceeds derived from:

- (1) Subcontracts executed prior to January 1, 1971;
- (2) The sale of tangible personal property to subcontractors performing under a general scientific contract where such sales are made prior to January 1, 1971; and
- (3) Maintenance and operation contracts (housekeeping functions) or from sales of tangible personal property pursuant to such contracts executed prior to January 1, 1971.

QUESTIONS AND ANSWERS

1. ABC Corporation entered into a contract with an agency of the United States to conduct the necessary design, development, fabrication, installation, integration and check out required in furnishing a ground based telemetry, tracking and command antenna subsystem on Oahu. May ABC Corporation claim the gross proceeds from the contract as exempt income under Section 237-26?

Answer. Yes. The performance required under the contract is scientific work with an agency of the United States and the gross proceeds received by ABC Corporation would be exempt from the general excise tax under Section 237-26.

2. XYZ is an electrical contractor and is awarded a subcontract by ABC Corporation to install an electrical wiring system in a scientific facility. May XYZ claim the contract income received from ABC Corporation as exempt income?

Answer. Yes. The gross proceeds from a subcontract between the prime contractor and any other contractor in connection with the performance of any scientific work with the United States would be exempt from the general excise tax.

3. ABC Corporation, departing from its technically oriented role, entered into a contract with an agency of the United States to provide services for the maintenance and operations of the Pacific Missile Range Facility. The foregoing services are in the nature of general support services (maintain and operate a supply activity, security and law enforcement services, warehousing facilities, utilities facilities, refuse collection and disposal services, messing and billeting facilities, food service facilities, movie theater, post office, library, etc.) which may be categorized as housekeeping functions in providing certain nonscientific logistic and support services. May ABC Corporation claim the gross proceeds from the contract as exempt income?

Answer. Yes. Maintenance or operation, for purposes of "scientific work," includes housekeeping functions.

4. Assume the same facts as in question (3) above, except that ABC Corporation is to provide general support services under a subcontract with Hawaii Electronics Company, the successful bidder of a NASA contract for the maintenance and operations of the Manned Space Flight Network Tracking Station on Kauai. May ABC Corporation, a subcontractor, claim the gross proceeds from the contract as exempt income?

Answer. Yes. The gross proceeds from a subcontract between the prime contractor and any other contractor in connection with the performance of any scientific work with the United States will be exempt from the general excise tax.

5. Hawaiian Builders, Ltd., entered into a contract with the U.S. Navy to provide certain construction work such as demolition, excavation, fencing, paving, masonry, carpentry, plumbing and structural additions to a missile range facility. Are such proceeds exempt from the general excise tax law?

Answer. No. The contract is only for the construction or addition of certain facilities and is not for the performance of any of the exempt scientific activities provided in Section 237-26.

6. An architect, licensed as a contractor under Section 237-6, entered into a contract with the U.S. Air Force to design drawings and specifications for the construction and alterations to certain nonscientific facilities on a tracking station. Are such proceeds exempt from the general excise tax under Section 237-26?

Answer. No. Such proceeds are from a contract involving nonscientific facilities and are not for the performance of any of the exempt scientific activities provided in Section 237-26.

7. P is engaged in the building supply business and sells electrical parts to ABC Corporation, a contractor with the United States, to be incorporated into a scientific facility. May P claim the sales of the electrical parts to ABC Corporation as exempt sales?

Answer. Yes. Sales of tangible personal property to a contractor or subcontractor which becomes a physical and integral part of a scientific facility during the performance of any scientific work with the United States are exempt under Section 237-26.

8. ABC Corporation was awarded a scientific contract by the U.S. Army. ABC Corporation subsequently purchased several trucks from a local dealer to be used in conjunction with the performance of the scientific work. Is the sale of the trucks exempt from the general excise tax?

Answer. No. Although the trucks were sold to a contractor who qualifies as a scientific contractor, such sale is nevertheless not exempt since the trucks do not become an integral part of the scientific facility.

9. Hawaii Electronics Corporation imported electronics equipment from the mainland to be installed at the Pacific Missile Range Facility. Is the use tax applicable on the landed value of the equipment?

Answer. No. The use tax is not applicable on the importation of any tangible personal property which becomes a part of a scientific installation as provided in Section 237-26.

10. ABC Corporation imported equipment from the mainland for exclusive use in providing services for the maintenance and operations of the Pacific Missile Range Facility. Must ABC Corporation pay a use tax on such imports?

Answer. No. Importation of equipment which is required for the performance and fulfillment of a scientific contract and exclusively used for such purposes and the original cost totally charged to the contract would be exempt from the use tax.

11. I.M. Tuff, a concrete manufacturer, furnished ready-mix concrete to a contractor engaged in the installation of scientific equipment under an exempt scientific contract with the United States. Because of the technical nature of the contract, specialized equipment not available locally is imported and utilized by I.M. Tuff to produce the ready-mix concrete. The materials used in manufacturing the concrete mix (sand, rock, etc.) are purchased from D. Fine Sand and Rock Company. Are these transactions exempt under Section 237-26?

Answer. The sale of ready-mix concrete by I.M. Tuff to the contractor engaged in an exempt scientific contract with the United States is exempt under Section 237-26 since the concrete will become a part of the scientific installation. Importation of equipment by I.M. Tuff is not exempt from the use tax as the equipment is not tangible personal property to be incorporated into or which becomes an integral part of the scientific installation itself. Such equipment is used by I.M. Tuff to produce tangible personal property for sale. Sale of sand, rock, etc., by D. Fine Sand and Rock Company to I.M. Tuff is not exempt. Section 237-26 does not provide for exemption of tangible personal property sold to persons other than a contractor or a subcontractor.

12. ABC Corporation entered into a contract to have Tidy Repair Shop adjust equipment to be installed in the performance of scientific work with the United States. May Tidy Repair Shop claim such income received from ABC Corporation as exempt income?

Answer. No. The income is for services rendered and does not represent income from sale of tangible personal property to a contractor.

13. Hawaii Electronics Company was the successful bidder of a NASA contract for the technical operations and maintenance of the Manned Space Flight Network Tracking Station on Kauai. One of the requirements of the contract provides that the station be operated on a 24-hour basis. Hawaii Electronics Company is also required to furnish quarters and meals for all employees hired and living at the scientific facility. Hawaii Electronics Company purchased foodstuff from Kauai Super Market to prepare meals for its employees. May Kauai Super Market claim the

gross proceeds from sales of foodstuff to Hawaii Electronics Company as exempt income?

Answer. Yes. The sales of foodstuff to Hawaii Electronics Company are sales of tangible personal property to a contractor which will be used in providing certain nonscientific logistic and support services.

14. Assume the same facts as question 13 above, except that Hawaii Electronics Company under the contract is required to maintain and operate a retail store for the convenience of authorized Federal government personnel and its own employees. Merchandise in stock includes reading and stationary material, tobacco, package liquor, and toilet-tries which were purchased from Kauai General Store. May Kauai General Store claim the gross proceeds from the foregoing sales as exempt income?

Answer. Yes. The sales of such items are sales of tangible personal property to a contractor which will be used in providing certain non-scientific logistics and support services.

15. Assume the same facts as question 13 above, except that merchandise in stock also includes radio, TV, toaster, golf clubs and poker table. May Kauai General Store claim the gross proceeds from sales of such items to Hawaii Electronics Company as exempt income?

Answer. No. Sales of radio, TV, etc. will not be construed as sales of tangible personal property which is to be entirely consumed during the performance of the service required by the contract nor required in providing certain nonscientific logistic and support services.

16. In order to claim certain scientific contracts with the United States or its agencies or instrumentalities as provided in Section 237-26, present practice requires the taxpayer to submit a copy of such contract or contracts to the Department of Taxation for review. Will this procedure still be in effect?

Answer. No. The foregoing procedure is rescinded as of this date. Hereafter, the claim for exempt scientific contracts covered by Section 237-26 may be made by a taxpayer without submitting a copy of such contract to the Department for review. However, the claim for exemption, similar to any other exemption or deduction claimed, will be subject to audit.

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