



TERRITORY OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

45

January 29, 1942

OPINION NO. 1795

TAXATION; GROSS INCOME TAX:

A manufacturer whose customer is buying for his own use is taxable at the retail rate.

SAME; SAME:

The applicability under the local statute of cases in certain states classifying job printers as engaged in a service business is not considered in the absence of a request for opinion as to such classification, together with statement of facts.

Honorable William Borthwick
Tax Commissioner
Territory of Hawaii
Honolulu, Hawaii

Dear Sir:

This is in reply to your request for advice as to the rate of tax job printers under the general excise tax law, Act 141 (Ser. A-44)L. 1935, as amended.

Prior to its amendment in 1939 said Act 141, L. 1935 contained a classification designated E, under subsection I of Section 2 of the act, which reads as follows:

"E. Tax upon printers and publishers. Upon every person engaging or continuing within this Territory in the business of job printing or printing or publishing newspapers, magazines or other periodicals and publications, the tax shall be equal to one percent (1%) of the gross income of such job printing, printing or publishing business."

As you point out, this provision was deleted by Section 1, subsection 1, of Act 252 (Ser. A-42) L. 1939, which amended said Act 141, L. 1935 as follows:

"By deleting subdivision E of subsection I of section 2 (section 2025B of said Revised Laws) thereof, the intent of this paragraph being to render the various types of business defined in said deleted provision taxable under such other provisions of said Act 141 as may by their term be applicable thereto."

The specific questions which you present arises out of two types of transactions:

(a) The production of printed matter for the customer's own use.

(b) The production of printed matter for sale by the customer.

Certain printers have taken the position that they are taxable at $\frac{1}{4}$ of 1% in both instances. Your position is that in the first instance the tax is 1 $\frac{1}{2}$ %, and in the second instance $\frac{1}{4}$ of 1%. You have requested our advice in the premises.

In my opinion the position taken by these printers that they are manufacturers does not support

their claim for the rate of $\frac{1}{4}$ of 1% in both instances. Paragraph (4) of classification B, under subsection I of Section 2 of the act provides:

"(4) A manufacturer or producer engaging in the business of selling his manufactured products at retail in this Territory shall be required to make returns of the gross proceeds of such retail sales and pay the tax imposed in this Act, for the privilege of engaging in the business of selling such products at retail in this Territory; and the value, or gross proceeds of sales, of such products, thus sold by the manufacturer or producer at retail and included in the measure of the tax imposed in this Act, shall be deducted from the gross income, or gross proceeds of sales, used in determining the measure of the tax imposed upon such manufacturer or producer as such.* * *"

Subsection (12) of Section 1 of the Act defines "retail" as follows:

"Retail" means the sale of tangible personal property than by a wholesaler as such within the definition of this Act, for consumption or use by the purchaser and not for resale."

Subsection (10) of Section 1 of the Act in turn defines "wholesaler" as follows:

"Wholesaler" or 'jobber' shall apply only to a person doing a regularly organized wholesale or jobbing business, known to the trade as such, and only with respect to the following sales; (a) sales, to a licensed retail merchant or jobber, for purposes of resale; (b) sales, to a licensed manufacturer, of material or commodities which are to be incorporated by such manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture or processing, including preparation for market, and

which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by such manufacturer; or (c) sales, to a licensed contractor, of material or commodities which are to be incorporated by such contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses."

Therefore, if the printer is a manufacturer making a "sale", such "sale" is at retail, and taxable at the retail rate (now 1½%). Moreover, there are authorities to the effect that job printing constitutes "service" and not a sale. H.G. Adair Printing Co. v. Ames, 4 N.E. (2d) 481 (Ill.); Washington Printing & Binding Co. v. State, 73 P. (2d) 1326 (Wash.); but see Long v. Roberts & Son, 176 So. 213 (Ala.); Bigsby v. Johnson, 99 P. (2d) 268 (Cal.) If a service business, the rate of tax would be the same as the retail rate.

Counsel for the printers and publishers present certain material as to the retail classification under the Fair Labor Standards Act of 1938. In view of the fact that the terms here involved are defined in the statute itself, the meaning which otherwise might have been given to such

terms is not material. Fox v. Standatard Oil Co., 294 U.S. 87, 79 L. Ed. 780; rehearing denied, 294 U.S. 732, 79 L. Ed. 1261.

In the second instance the classification at the rate of $\frac{1}{4}$ of 1% is permitted by paragraph 5 under classification B of subsection I, Section 2 of the Act, and by subsection (10) of Section 1 of the act, if the printer is a manufacturer, and if the purchaser is a licensed retailer, but the facts are insufficient to enable us to say whether this is manufacture, or whether it is service business and taxable at 1 $\frac{1}{2}$ % for that reason.

As above indicated, there are a number of cases in other states dealing with the question whether printers are sellers or are engaged in a service business. The question of who furnishes the paper is by no means the only criterion. How such cases apply under the local statute cannot be considered upon the facts before us. As I understand your request, it relates only to the question whether classification of the job printers as manufacturers would lead to a uniform rate of $\frac{1}{4}$ of 1%. We agree that it would not. Whether or not the job printers are manufacturers and the application of the wholesale and retail rate in particular instances of course depends

upon the facts. No doubt there are a variety of circumstances, and typical cases would have to be presented and considered.

Respectfully,

(s) RHODA V. LEWIS

Rhoda V. Lewis
Deputy Attorney General

APPROVED:

BY: [Signature]

Attorney General