TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL

HONOLULU

45

February 3, 1942

OPINION NO. 1798

TAXATION; GROSS INCOME TAX:

The furnishing of transportation by a taxi company is not taxable at the wholesale rate of ¼ of l%, irrespective whether or not the transportation is furnished directly to the customer, since there is no wholesale rate for services.

SAME; SAME:

Sale of transportation tickets is not a sale of tangible personal property.

Honorable William Borthwick
Tax Commissioner
Territory of Hawaii
Honolulu, T.H.

Dear Sir:

This opinion is in reply to your inquiry as to the rate of tax applicable to a certain company wchich operates a fleet of cars between Honolulu and Schofield Barracks or Hickam Field, i.e. is the rate of tax ¼ of l% as contended the company, or is it 1¼% (or 1½%) as you have notified the company. The question arises under Act 141 (Ser. A-44) L. 1935, and involves the sale of trasportation tickets at the Post Exchanges. It

appears that tickets are so sold for transportation between Honolulu and Schofield or Hickam at fifty cents each to the customer, of which the company receives forty cents. The company contends that the post exchange is not merely an agent selling these tickets on commission, but on the contrary the company sells the tickets to the post exchange and the post exchange resells them to the customers.

The company's view of the transaction appears to me to be incorrect. It assumes that the post exchange is in the transportation business. However, it is unnecessary to go into that matter since the company would not be entitled to the wholesale rate of ¼ of 1% rate even if its view were correct.

In order to claim the ¼ of 1% rate the company would have to be taxable under classification B of sub-section I, Section 2, Act 141 (Ser. A-44) L. 1935. This is the only classification which provides a ¼ of l% rate except manufacturing, and is the only classification which makes a distinction between wholesaling and retailing. Classification B is inapplicable, however, since it only relates to the business of selling “tangible personal property”. Taxpayer clearly is taxable under classification F, relating to “service business” and not under B. Classification F makes no distinction between wholesaling and retailing.

The sale of tickets clearly is not the sale of "tangible personal property." The ticket is merely a receipt or voucher to show that the fare has been paid. McCollum v. Southern Pacific Co., 37 Utah 494, 88 Pac. 663, 665. The gross income is derived from the furnishing of transportation, the ticket being worthless except as evidence of the right to transportation. The transaction therefore constitutes the sale of service as distinguished from the sale of tangible personal property. It is only where the statutory provisions as to wholesale transactions specifically include the sale of service as well as the sale of tangible personal property the sale of service can be classified as a wholesale transaction. This is brought out in State Board v. Stanolind Oil & Gas Co., 65 P. (2d) 1095 (Wyo.)

Respectfullly,

Rhoda V. Lewis

Rhoda V. Lewis
Deputy Attorney General

Approved:

Attorney General