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OP 55-94

October 20, 1955

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

Dear Sir:

This is in reply to your request for advice as to whether, if a foreign corporation qualifies under Act 267 (Ser. c-193), L. 1953, to engage in the Territory solely in making, servicing and collecting of loans secured by mortgages of real and personal property, is such corporation subject to the bank excise tax imposed by chapter 97 of the Revised Laws of Hawaii 1945? I understand that the foreign corporation here involved is incorporated as a bank in the state of New York.

In my opinion a corporation so entering the Territory is not subject to bank excise tax. Act 267, above cited, provides that any foreign corporation, whether a bank, insurance company, or engaged in any other business in the state of domicile which includes investing in real estate mortgages, may qualify under that Act. Thus the fact that this particular corporation is incorporated in the state of domicile to do a banking business is coincidental; it could be an insurance business or any other business which involves investing in real estate mortgages.

Exemption from all other laws as to qualification as a foreign corporation is provided for by Act 267. Moreover, Act 267 expressly provides that a corporation licensed under Act 267 need not qualify under the Hawaii Bank Act, chapter 152 of the Revised Laws of Hawaii 1945. I understand that this corporation does not intend to qualify under chapter 152 and therefore will not be authorized to do and will not be conducting in the Territory a banking business, but only such business as is permissible not only to banks but to many other corporations as well.

Section 5301 of chapter 97, the bank excise tax law, defines a foreign bank so as to refer to section 8006 of chapter

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152, the Hawaii Bank Act. This section speaks of "any banking business" but obviously does not purport to say that the mere making and servicing of loans in itself comes within this expression. Such interpretation is ridiculous, as it would require all foreign corporations to qualify as banks, if they were engaged in making loans and had any other business in the Territory. (The existence of the other business would prevent them from qualifying under Act 267.) But upon qualifying as banks they would be prohibited from conducting a general business in the Territory. For example, under this interpretation a foreign corporation engaged in a mercantile business in the Territory could not finance its own installment sales. No such ridiculous interpretation can have been intended.

Respectfully,

RHODA V. LEWIS
Deputy Attorney General