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OP. 57-150

TERRITORY OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU

November 22, 1957

Honorable Earl W. Fase
Tax Commissioner
Territory of Hawaii
425 South Queen Street
Honolulu, Hawaii

Dear Mr. Fase:

This is in response to your oral request of October 14, 1957, for an opinion as to the tax rate that should be applied under Section 117-14(a) (1), Revised Laws of Hawaii 1955, to the following situation:

The Hawaiian Pineapple Company, Limited, the taxpayer concerned, packs a pineapple product which it refers to as "Frozen Chunks" by placing pieces of raw pineapple into tin containers which are, after syrup is added, hermetically sealed. The sealed cans then circulate through a freezing tunnel for approximately one hour and forty-five minutes. In this tunnel the contents of the cans are frozen solid by means of cold air having a temperature of minus 30° F. being circulated through it. The average temperature in the tunnel is about minus 25° F. After being frozen the cans are then cased and stored until shipment in a room having a temperature ranging from minus 10° F. to 0° F.

Another product involved in your question is frozen pineapple juice which the taxpayer refers to as "Frozen Concentrate." After extraction from the fruit, the raw juice is heated to approximately 140° F. for a period of a few seconds for the purpose of stabilizing its flavor by inactivating a certain enzyme. It is then deaerated and undesirable matter therefrom extracted. Following this process it passes through each of three low temperature evaporation tanks where it is concentrated by being boiled at successively

lower temperatures, the temperature in these tanks varying from 130° F. in the first tank to approximately 60° F. in the third. After being concentrated it is filled into tin containers which are hermetically sealed. The concentrated juice is then frozen solid by the same process and stored under the same conditions as the frozen chunks.

It is the opinion of this office that the pineapple cannery rate of two and one-half per cent should be applied to these products.

Section 117-14(a) (1) reads:

"There is hereby levied and shall be assessed and collected annually privilege taxes against persons on account of their business and other activities in the Territory measured by the application of rates against values of products, gross proceeds of sales or gross income, whichever is specified, as follows:

(a) Tax on manufacturers. (1) Upon every person engaging or continuing within the Territory in the business of manufacturing, compounding, canning, preserving, packing, milling, processing, refining or preparing for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, any article or articles, substance or substances, commodity or commodities, the amount of such tax to be equal to the value of the articles, substances or commodities manufactured, compounded, canned, preserved, packed, milled, processed, refined or prepared, for sale, as shown by the gross proceeds derived from the sale thereof by the manufacturer or person compounding or preparing them (except as hereinafter provided), multiplied by the following respective rates:

Millers or processors of sugar, raw or refined, two and one-half per cent; pineapple canneries (including canning of pineapple juice), two and one-half per cent; all other manufacturers, one per cent."

It levies a tax upon pineapple canneries (including canning of pineapple juice) of two and one-half per cent of the value of the products canned as shown by the gross proceeds derived from the sale thereof. There is no question that the taxpayer involved is a pineapple cannery and a canner of pineapple juice; the issue is whether frozen chunks and frozen concentrate are "canned", or, restated, whether the taxpayer's activity with reference to such products constitute "canning" within the meaning of this section.

Words in a statute are to be given their common or ordinary meaning unless it appears from the context that a different meaning was intended. Hawaii Cons. Ry. v. Borthwick, 35 Haw. 269, 272-273. It is presumed that the legislature intended such words to be given their popular meaning. 50 Am. Jur., Statutes, §238; Sec. 1-17, R.L.H. 1955.

Webster's New International Dictionary (Second Edition, unabridged, 1934) defines "canning" as "The process or business of sealing food in cans, or jars, esp. for commercial distribution." and "canned" as "Preserved in cans." "Canning" is defined in Funk & Wagnalls New "Standard" Dictionary Of the English Language (1956) as being "The act, process, or business of preserving fruits, vegetables or meats by partial cooking or other process, and hermetically sealing in tin cans, glass jars, etc."

The process used by the taxpayer in its production of frozen chunks and frozen concentrate falls clearly within the foregoing definition of "canning."

We understand the taxpayer's contention is that "canning" is a process or preserving food in tin containers or glass jars by cooking the contents so as to sterilize them and hermetically sealing such containers and that it cites as authority therefor several technical passages from various

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sources. Assuming, but not conceding that the term has such a restricted technical meaning, such a meaning is not controlling. Where a term has both a recognized common and a technical meaning, in the absence of a contrary legislative intent, it will be accorded its common meaning. Ex Parte Gundelfinger, 87 Cal. App. 638, 262 Pac. 465.

Very truly yours,



NOBUKI KAMIDA
Deputy Attorney General
Territory of Hawaii

APPROVED:

HERBERT Y. C. CHOY
Attorney General