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Op. 57-30



TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL

HONOLULU

April 3, 1957

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

Attention: Mr. J. A. Bell

Dear Sir:

This is in reply to your letter of March 5, 1957 in which you inquired as to the interpretation of Title 4 of the United States Code, Section 104, providing for the application of the fuel tax "when sold by or through post exchanges * * * located on United States military or other reservations, when such fuels are not for the exclusive use of the United States." The question at issue concerns the interpretation of this provision when gasoline is bought by the American National Red Cross from a post exchange or similar agency on a military reservation.

By a letter of February 15, 1943 we advised you that in time of war sales of fuel to the American Red Cross were exempt. This opinion was based on the section which later became section 5405 of the Revised Laws of Hawaii 1945, now Section 123-4 of the Revised Laws of Hawaii 1955.

The American National Red Cross has called to your attention Pub. L. No. 131 83d Cong., 67 Stat. 178, c. 222, approved July 17, 1953 (36 U.S.C. §§17 and 17a). This provides that whenever Red Cross cooperation and assistance with the Armed Forces shall have been accepted by the President, then Red Cross assistance may be employed "under the Armed Forces" and necessary Red Cross equipment and supplies may be transported at the cost of the United States.

The narrow question presented here is whether the American National Red Cross, under certain circumstances, is to be considered as buying gasoline "for the exclusive use of the United States" within the meaning of the federal statute (4 U.S.C. § 104). I am of the view that the language "for the exclusive

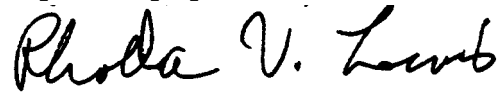
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use of the United States" does prevent the application of the tax if the Red Cross presents proper proof of purchase of the gasoline for a function which is within the scope of the employment under the Armed Forces, for which the president has accepted Red Cross assistance. Of course it is proper for you to set up administrative procedure whereby it will be certified that the gasoline as to which no fuel taxes are applied will be used only for these particular functions.

I agree with you that there is no provision in the fuel tax law for refunds.

Very truly yours,

A handwritten signature in cursive script that reads "Rhoda V. Lewis".

RHODA V. LEWIS
Deputy Attorney General