address reply to the attorney general of hawaii" and refer to initials and number RVL:AH

653:45; OLC

OP 57-42



TERRITORY OF HAWAII department of the attorney general honolulu

May 22, 1957

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

Dear Sir: Attention: John A. Bell Deputy Tax Commissioner

This is in reply to your oral request for an opinion as to the liability to gross income tax of a professor who, as a sideline, writes books and receives royalties therefrom.

"Business" is defined by section 117-2, R.L. 1955 (formerly section 5443, R.L. 1945) as follows:

"'Business', 'engaging' in business, defined. 'Business' as used in this chapter, includes all activities (personal, professional or corporate) engaged in or caused to be engaged in with the object of gain or economic benefit either direct or indirect, but does not include casual sales."

"Gross income" is defined by section 117-3, R.L. 1955 (formerly section 5444, R.L. 1945) as follows:

"'Gross income', 'gross proceeds of sale', defined. 'Gross income' means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and all receipts actual or accrued as hereinafter provided, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, interest or discount paid or any other expenses whatsoever. *** " Honorable Earl W. Fase Page 2 - 5/22/57

That a writer is engaged in "business" and taxable upon the gross income therefrom is clear from these definitions.

The activities need not be regular or continuous in order for the tax to apply. See <u>Sollitt and Sons Construction Co.</u> v. <u>Commonwealth,</u> 172 S.E. 290, Va. 1934; <u>Laing v. Fox,</u> 175 S.E. 354, W. Va. 1934; <u>Finance Factors, Limited,</u> Tax Appeal No. 678, Decision of November 21, 1956.

The question whether the taxpayer is "regularly engaged" in business as a writer, which necessarily is applicable under the federal Self-Employment Contributions Act of 1954, considering the purposes of that act, does not apply under this territorial act. Compare Rev. Rul. 55-385, CB 1955-1,100.

However, it should be noted that the tax would not apply to an author merely by reason of ownership of a copyright from which royalties were received from out-of-the-Territory publishers. In other words, an author owning such a copyright and moving to Hawaii would not thereby become liable to tax upon the royalties. The activity of the writer as such, engaged in within the Territory, is the focal point for taxation by the Territory.

Very truly yours,

Phode V. Como

RHODA V. LEWIS Deputy Attorney General