

RVL:AH
652:45:OLC

OP 57-43

May 22, 1957

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

Dear Sir:

This is in reply to your letter of February 1, 1957. I regret that due to the legislative session it was not possible to answer your letter sooner. You have presented the following question:

The taxpayer involved was a general agent from 1923 to 1951, and a solicitor from 1951 to 1955, when he retired. The taxpayer obtained business for his company under an agreement with the company that, on all renewals of the business, commissions would be paid. These renewal commissions accordingly have been paid even though, since retirement, the taxpayer does not service the accounts.

Section 117-10, R.L. 1955 (formerly section 5451, R.L. 1945) provides that a taxpayer is licensed upon condition that he shall pay the taxes accruing to the Territory under the provisions of the general excise tax law.

Accordingly one who engages in a service business or other activity is liable for the tax upon the gross income therein whenever it is received or accrued, even though he no longer is licensed.

If this were not the case a taxpayer could arrange for the deferred payment of gross income and then go out of business before the payment came due. Section 117-10 was designed to meet this very situation.

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In the present case the tax applies to renewal commissions from business booked on or after July 1, 1935. The business booked before July 1, 1935 was not under any license as to payment of the tax.

Respectfully,



RHODA V. LEWIS
Deputy Attorney General