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TERRITORY OF HAWAII  
Department of the Attorney General  
Honolulu

op. 57-90

August 27, 1957

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

Dear Sir:

You have asked us to comment on a letter of August 22, 1957, from the Maui Chamber of Commerce. This letter refers to a letter of Deputy Tax Commissioner J. A. Bell dated August 20, 1957, and you also have furnished us a copy of a letter of Maui Assessor F. A. Alameda dated August 23, 1957.

Messrs. Bell and Alameda already have set forth the application of the tax law. I will add some comments on the Maui Chamber of Commerce letter, as follows:

(1) Sales to the territorial and county governments, their agencies and instrumentalities, to exempt organizations etc. designated in section 117-20, and to persons licensed under the general excise tax law, all are subject to a tax upon the seller of 3 1/2% levied by subsection(b) (1) of section 117-14, for engaging in the business of selling.

The way question (1) is stated in the Maui Chamber of Commerce letter suggests that the buyer of merchandise is the taxpayer. This definitely is not the case.

(2) The Maui Chamber of Commerce letter asks: "Where the sale is exempt from tax are the gross proceeds from such sales also exempt from tax?" Since the letter states that the Chamber is seeking an interpretation of section 117-14.6 the best answer to this question is that section 117-14.6 does not exempt any sales from tax.

In order that all interested persons may be fully informed, the matter is explained further as follows:

Section 117-14.1, \* added by Act 34 of the Regular Session of 1957, section 11(h), contains the following:

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\*Section number assigned to this new section by the Secretary of Hawaii.

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"If a business is within the purview of two or more of the subsections of section 117-14 or other provisions of this chapter all of them apply, each provision being applicable to the appropriate item of gross income, gross proceeds of sales or value of products."

Both section 117-14(b)(1) and Section 117-14.6 apply to gross proceeds of retail sales. However a double tax does not result for two reasons. The first reason is that section 117-14 (b)(10) was amended by Act 1, Sp. S. L. of 1957 to state: "provided, that insofar as certain retailing is taxed by section 117-14.6, the tax shall be that levied by section 117-14.6, \* \* \*." This means that the sales listed in section 117-14.6 as being those to which that section relates are covered by that section, and section 117-14(b)(1) continues to apply to other sales such as sales to the Territory and the counties.

The second reason why there is not a double tax is that subsection (e) of section 117-14.6 provides: "The provisions of this section shall not cause the tax upon a taxpayer, with respect to any item of his gross income, to exceed three and one-half per cent."

While I have spoken of "sales" in this letter, the same principles apply to other matters, such as the rendering of services.

I note that Mr. Bell already has sent out General Excise Tax Memorandum No. 4. This should serve to make it clear that the general excise tax, whether or not a "visible pass-on" is used, still is part of the price of the goods sold, the services rendered etc. This is true no matter what section the general excise tax is levied under.

For example, if the Territory or the county calls for bids and the bid that is accepted does not say anything about making a separate charge to cover the tax, the bid price is all that the bidder can collect from the Territory or county. Nevertheless the bidder is subject to the 3 1/2% tax.

Very truly yours,

(S) Rhoda V. Lewis

RHODA V. LEWIS  
Deputy Attorney General