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TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
H O N O L U L U

Op. 59-44

April 16, 1959

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

Attention: Mr. John A. Bell
Deputy Tax Commissioner

Dear Sir:

This is in response to your request for advice concerning the application of the consumption tax law, Chapter 119 of the Revised Laws of Hawaii 1955, to the following situation:

The taxpayer, a corporation, is engaged in the activity of treating lumber by a process in which certain chemicals, which the taxpayer imports, are forced under pressure into the wood. It treats its own lumber as well as that belonging to other persons. A consumption tax assessment is being proposed upon its use of the imported chemicals in treating the lumber of other persons.

We are of the opinion that the proposed assessment maybe issued.

Although section 119-5, R.L.H. 1955, provides that every person who imports into the Territory any property for his use or consumption is subject to tax in respect of such use or consumption, certain uses are excepted from the incidence of the tax. The taxpayer contends that the use with respect to which the assessment is being proposed falls within the exception provided by subsection (b) of section 119-2, inasmuch as the persons whose lumber is treated by it is to be sold by them. This subsection reads as follows:

"(b) the use or keeping for use of property as material which is or is to be incorporated by the taxpayer into a finished or saleable product,***during the course of its preservation, manufacture or processing, including preparation for market, and which remains or will remain in such finished

or saleable product in such form as to be perceptible to the senses, and which finished or saleable product is or is to be sold and not otherwise used by the taxpayers;"

From the facts and circumstances related to us we agree that the use made of the imported chemicals in treating its own lumber is nontaxable.

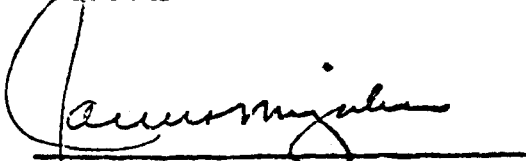
However, the use of the chemicals in processing the lumber of others is taxable, even though such other persons may sell the lumber so processed by the taxpayer. The expression "is or is to be sold" appearing in the last clause of said subsection (b) is plainly confined to sales or plans for sale "by the taxpayer," and does not apply to sales by persons other than the taxpayer. The word "or" marks an alternative as to time of sale rather than as to persons by whom the product may be sold, just as much as the "or" in the words "is or is to be" in the second line of the subsection presents an alternative not as to persons who may do the incorporating but rather as to time of incorporation by the taxpayer.

Very truly yours,



NORBUKI KAMIDA
Deputy Attorney General

APPROVED:



JACK H. MIZUHA
Attorney General