NK:n
15a
Op. 62-47

STATE OF HAWAII

Department of the Attorney General

HONOLULU

August 22, 1962

Honorable Earl W. Fase
Director of Taxation
State of Hawaii
Honolulu, Hawaii

Attention: Mr. J. A. Bell
Deputy Director of Taxation

Dear Sir:

This is in response to your letter of August 3, 1962, concerning the tax liability of a cooperative apartment corporation. It contends that it is not engaged in any business within the meaning of the general excise tax law (Chapter 117, R.L.H. 1955) and hence is not taxable on its receipts of monthly "maintenance" charges from its stockholder-lessees.

In accordance with your request we have reviewed Opinion of the Attorney General No. 1750, dated October 2, 1939, in which the Tax Commissioner was advised that a corporation or association operated for the economic benefit of its shareholders or members is operated "with the object of gain or economic benefit" and is "engaged in business" within the meaning of the statute. (Section 1(7) of Act 141, S.L. 1935, which is section 117-2 of the Revised Laws of Hawaii 1955.) We affirm that opinion and think it sufficiently covers the question presented by the cooperative apartment corporation; that is, it is our opinion that the operation and management of the apartment building or buildings for the purpose of meeting taxes, rents and maintenance expenses is "with the object of gain or economic benefit either direct or indirect," and the monthly payments collected for that purpose constitute taxable gross income. see also Opinion of the Attorney General No. 1703, dated May 2, 1939.

In addition to the cases cited in the opinion of October 2, 1939, see Union League Club v. Johnson, 115 P.2d 425 (1941); Bonnar-Vawter, Inc. v. Johnson, 173 A.2d 141 (1961).

We are also of the view that section 117-17.1, R.L.H. 1955 as amended (Section 11(i), Act 34, S.L. 1957), which provides in part as follows applies:

> "... A person or company, whether or not called a cooperative, through which shareholders or members are pursuing a common

> objective (for example, the obtaining of property or services for their individual businesses or use, or the marketing of their individual products) is a taxable person, and such facts do not give rise to any tax exemption or tax benefit except as specifically provided. Even though a business has some of the aspects of agency it shall not be so regarded unless it is a true agency. Without prejudice to the generality of the foregoing, the reimbursement by one person of the amount of costs incurred by another constitutes gross income of the latter, unless the person making the reimbursement was himself, as principal, liable in that amount to the third party who furnish the property, services and the like for which the costs were incurred."

The shareholders in the corporation are pursuing the common objective of obtaining property and services for their individual use; furthermore, it is the corporation which is primarily liable to the owner of the land for the taxes and rents and to those providing other property and services, the charges for which are included in the monthly "maintenance" charges.

Very truly yours,

/s/ Nobuki Kamida

NOBUKI KAMIDA
Deputy Attorney General

APPROVED:

/s/ Shiro Kashiwa

SHIRO KASHIWA
Attorney General