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Op. No. 68-2

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU, HAWAII 96813

March 6, 1968

The Honorable George K. Noguchi
Representative
15th District
Iolani Palace
Honolulu, Hawaii

Dear Sir:

This is in response to your request for an opinion from this office as to whether subsection 117-21(p), R.L.H. 1955, as amended, is applicable ". . . to co-ops alone or also to condominiums." The third paragraph of your request states:

"By adding subsection (s) in Act 297 which was enacted into law last year, it would seem that such action supports the theory that subsection (p) standing alone is applicable only to co-ops."

It is our opinion that subsection 117-21(P) is only applicable to cooperative housing corporations (co-ops).

Section 117-21, R.L.H. 1955, as amended, provides that the Hawaii general excise tax law is not applicable to the amounts set forth in that section. Subsection 117-21(P) provides:

"(p) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by such corporation for the expenses of operating and maintaining the cooperative land and improvements, provided that if any shareholder shall fail to report and pay the taxes assessable on any amounts received by virtue

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of stock ownership in a cooperative housing corporation, the provisions of this chapter shall apply to all reimbursed amounts received by such corporation, and provided, further, that such a cooperative housing corporation is a corporation:

"(1) having one and only one class of stock outstanding.

"(2) each of the stockholders of which is entitled solely by reason of his ownership of stock in the corporation to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation.

"(3) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation."

The purpose of Act 297, S.L.H. 1967, as stated in Section 1, was to ensure uniform, equitable, and unambiguous application and enforcement of the provisions of Chapter 117 relating to monies received as reimbursements for costs and advances.

Section 3 of Act 297 amended the provisions of subsection 117-21(p) to read as previously set forth. Prior to the 1967 amendment, subsection 117-21(p) exempted amounts received by co-ops for the reimbursement of funds paid out by the co-op for maintenance and upkeep fees, from the application of the general excise tax law. The 1967 amendment imposed additional requirements before the reimbursement funds would be exempted from the application of the general excise tax law but did not alter the applicability of said subsection only to cooperative housing corporations.

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Section 4 of Act 297 added a new subsection, designated as subsection (s), to Section 117-21. That subsection exempts from the application of the general excise tax law, monies received by a manager or board of directors of an association of apartment owners of a horizontal property regime for reimbursement of funds paid for common expenses of the horizontal property regime. This subsection obviously provides for condominium units the same exemptions from the general excise tax law afforded cooperative housing corporations set forth in subsection 117-21(p).

Based on the foregoing, we conclude that subsection 117-21(p) is only applicable to cooperative housing corporations and exempts from the application of the general excise tax law, those amounts received by each corporation from its shareholders in reimbursement of funds paid by the corporation for the expenses of operating and maintaining the cooperative land and improvements.

Very truly yours,

/s/ Melvin K. Soong

MELVIN K. SOONG
Deputy Attorney General

APPROVED:

/s/ Bert T. Kobayashi

BERT T. KOBAYASHI
Attorney General