



DEPARTMENT OF TAXATION

STATE OF HAWAII

July 13, 1972

TAX INFORMATION RELEASE No. 39-72

RE: Application of the General Excise Tax on Sales of Paint to Persons Engaged in the Automobile Painting Business

Section 9, Part II of Act 180, L. 1970 amended Section 237-4 by adding to the definition of sales at wholesale the following:

"(7) Sales of tangible personal property to a licensed person engaged in the service business, provided that (1) said property is not consumed or incidental to the performance of the services; (2) there is a resale of said article at the retail rate of 4 per cent; and (3) the resale of said article is separately charged or billed by the person rendering the services." Emphasis added.

In the recent case of Alexander & Baldwin, Inc., the Supreme Court of Hawaii held that the tax appeal court correctly held that the automobile paintshop owners consumed the paint in the performance of their services and that sales of paint by the taxpayer to the automobile paintshop owners were sales of tangible personal property for consumption or use by the purchaser and not for resale, within the meaning of Section 237-16 (a)(1), H.R.S.

Accordingly, the sales of paint to persons engaged in the automobile painting business constitute "retailing," rather than "sales at whole-sale;" and as such, the above-mentioned sales are subject to the general excise tax at the rate of 4 per cent.

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Legal Reference: Supreme Court Case No. 5118