

## UNITED STATES DEPARTMENT OF THE INTERIOR OFFICE OF THE SOLICITOR WASHINGTON, D.C. 20240

May 18, 1976

DGL-T: CBC 110340

Memorandum

To:

Director of Territorial Affairs

From:

Assistant Solicitor, Territories

Division of General Law

Subject: Applicability of Surtax to Certain Entities

By memorandum dated May 7, 1976, you have asked for my opinion as to whether any or all of the nine entities you list are exempt from the TTPI surtax levied by P.L. No. 6-52. This law, in effect, returns 1% of 3% of the income tax on wages and salaries to the district where the revenues originated and authorizes the districts to impose an additional 1% income tax. It also provides for a 100% surtax on the gross receipts tax which is returned to the districts pursuant to local, district legislation, and it provides for the distribution to the district's import and export levies and gasoline and diesel fuel taxes collected pursuant to TTPI law.

Secretarial Order 2918, as amended, provides in part:

. . . Any parts of any laws passed by the Congress of districe legislatures in the aggregate imposing upon United States agencies, instrumentalities, contractors of the United States and their respective non-Micronesian citizen employees any greater, tax fee, revenue, duty, tariff, impost, charge or cost of any kind that is imposed by Trust Territory of the Pacific Islands Public Law 4C-2 as amended prior to 1975 (77 TTC Chapter 11) shall, to the extent it imposes such tax, fee, revenue, duty, tariff, impost, charge, or cost, not be given effect, except that, the exemptions from such tax, fee, revenue, duty, tariff, impost, charge, or cost described above shall not be applicable to activities conducted exclusively for or on behalf of the Trust Territory of the Pacific Islands by (1) its agencies, instrumentalities, contractors, and their respective employees, or (2) by non-military United States agencies, instrumentalities, contractors, and their respective employees. . .

Basically, the Secretarial Order is designed to prevent tanation by the TTPI at rates higher than 3% on income and 1% on gross receipts of applied



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States agencies, instrumentalities, and their contractors not engaged in activities conducted exclusively for or on behalf of the TTPI.

It would appear at the outset, therefore, that the Bank of Hawaii and Mobile Oil Micronesia at Kwajalein and their employees are not exempt from the gross receipts or income surtax unless it can be demonstrated that they fall into the category of contractors of the United States.

With respect to the Post Offices (regardless of where located), they are U.S. agencies or instrumentalities and it does not appear that they are conducting activities exclusively for the Trust Territory of the Pacific Islands. Accordingly, their non-Micronesian employees would be exempt from the surtax. Similarly, non-Micronesian employees—the Peace Corps, the Micronesian Claims Commission and the U.S. Weather Services Bureau—would also be exempt from the surtax since the activities of these U.S. agencies appear to be conducted for the U.S. Government though the Trust Territory is the principal beneficiary. With respect to the Peace Corps volunteers, who are not considered employees of the U.S. Government, they do not receive salaries or wages. They receive a subsistance or living allowances which should not be considered wages and salaries for income tax purposes.

In the case of the Micronesian Legal Services Corporation and the Community Action Agency, these entities are, as I understand it, organized under local law and, though funded by grant monies from the United States, are not considered Federal agencies or instrumentalities, and they certainly are not agencies or instrumentalities of the TTPI. Accordingly, the income of the employees of these entities would be subject to the surtax. In the case of MLSC and CAA, since they are non-profit organizations, there would be no gross receipts tax on their income, if any. Accordingly, the gross receipts surtax would be inapplicable in any event.

Please let me know if I can be of further assistance.

C. Brewster Chapman, Jr.

cc: Paul Magid
Assoc. Gen. Counsel
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