April 19th, 1916.

OPINION NO. 510.

TAXATION:

Assessment of different interests in property must be made separately.

O. T. Shipman, Esq.,
Tax Assessor, Third Division,
Hilo, Hawaii.

Dear Sir: In reply to your letter of the 13th inst. wherein you inquire as to whether or not it would still be necessary to assess separately the different interests in property under lease where there is a covenant providing for the payment by the lessee of all the taxes, and wherein you refer to Section 1242, R. L. 1915, which provides that the "interest of every person in any property shall be separately assessed", I have to advise as follows:

I feel quite convinced that the assessing of all interests in any property to one person would greatly facilitate and simplify the work of your office. However, no discretion is allowed you in the statute to make the assessment in a manner different from that provided for.

The covenant between the lessor and the lessee does not, in any way, relieve the former of his liability to pay the taxes on his own interest. In the case of *Brown* v. *Smith*, 8 Haw. 677, the court said:

"The fact of the covenant of the tenant to pay the taxes does not affect the landlord's liabilty; such covenant Is a private agreement and does not modify the methods of assessing and collecting taxes fixed by law."

It is my opinion that the method of making assessments as prescribed in the statute must be followed strictly. In support of this view, I might state that if the assessment were made wholly to the lessee and the lessee failed to pay the taxes, a writ of execution in an action for the collection

thereof would only reach his leasehold interest, and in case a suit were brought against the lessor for the taxes due on his interest, without a proper assessment having been previously made against such interest, some difficulty would very likely be encountered in securing a recovery, in view of the following statement made by the court in the case above cited:

"As to the second ground of defense, i.e., that defendant is not liable because the property was not assessed to him but to the Watson estate, I find that the law provides, in Section 21, that every executor, administrator or guardian shall be assessed separately in respect of each property or trust which he represents, and shall be chargeable with the tax payable in respect thereof in the same manner as if such property were his own, and he shall be assessed respectively in his name as representative of the property or trust he represents. This provision of the statute has been disregarded In every particular In this case. Not only is the property of the defendant's ward assessed to the Watson estate instead of to the defendant, but the interest of the ward is assessed in a lump sum with the interest of the tenant in common instead of being assessed separately as required by the statute. I find that such an assessment is not binding upon the defendant."

I might state further that, unless the lessor's interests were properly assessed to him, there would be some question as to whether or not you could enforce the statutory tax lien against such interest.

It seems to me that the view which I have taken upon this subject obviates the necessity for any opinion upon your query as to whether or not a departure from the method of assessment prescribed by law would work an injustice upon the lessee, prejudicing his rights.

Very truly yours,

WM. H. HEEN,
Deputy Attorney General.

Approved:
INGRAM M. STAINBACK,
Attorney General.