

April 23, 1919.

OPINION NO. 826.

TAXATION: ENTERPRISE FOR
PROFIT:

In estimating income as one factor in determining the value of the property of an enterprise for profit, the Federal war tax or excess profit tax should not be deducted therefrom.

Hon. Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir: I beg to acknowledge the receipt of your communication of March 25th, 1919, in which you request the opinion of this department as to whether, in determining the value of the property of an enterprise for profit, there should be deducted from the income of certain corporations, the amount of money paid to the Federal Government by way of war tax or excess profit tax.

Under the system of taxation in vogue in this jurisdiction, certain property is assessed as an enterprise for profit, and the assessed value is based upon various considerations such as income, stock value, dividends, and the physical value of the various items entering into the entire business as an enterprise for profit.

The question now arises as to whether, in computing the income as one of the factors by which the value of the combined property is determined, there should be deducted from the gross income of the enterprise as an expense of the business or otherwise, the amount of money paid to the Federal Government as a "war tax" or "excess profit tax." I am of the opinion that this question must be answered in the negative.

If we were now considering a deduction from income for the purpose of fixing the amount of the Territorial income tax which any such corporation might be required to pay, such payment certainly would be deductible, but we are not considering income as such, but merely as one factor in the determination of the gross value of the property when combined as an enterprise for profit.

As a matter of fact, when we consider that the value of the stock is one prime factor in determining the value of the property of such an enterprise, and the further fact that the payment by the corporation of this Federal Tax reflects upon the value of that stock, reducing that value in proportion to the amount of the tax, it is plain that to allow the deduction again from income for this purpose, would be, in effect, a double deduction of the said amount for the same purpose.

So far as I have been able to discover, the question has never been directly passed upon by the courts here or elsewhere. Our statute with reference to the taxation of enterprises for profit is peculiar to this jurisdiction and we are confined almost entirely to the decisions of our local supreme court for light upon the subject.

A somewhat similar question, however, was discussed by the Territorial Supreme Court with reference to deductions claimed from income for the purpose of determining the value of a certain enterprise for profit. In the case of *Gay and Robinson v. Assessor*, reported in 17 Haw. 237, the tax payers in that case in returning their income as one factor in determining the value of the property as an enterprise for profit, claimed the right to deduct therefrom a life interest of the grantor to them of certain property in the amount of \$3,500.00 per year. The Supreme Court, however, held that this could not be deducted, and speaking through Chief Justice Frear, said:

“As stated by counsel for the appellants, three classes of evidence were introduced as bearing upon the value of this property, which was assessed as a whole as the property of an enterprise for profit. Of these three classes doubtless, as suggested also by counsel, that in regard to the income producing capacity of the property is the most important under the special circumstances of this case. In regard to this the principal question seems to be whether in estimating the net income, there should be deducted the sum of \$3500.00 which the owners of the property are obliged to pay annually as part of the purchase price, as we construe it, of a life interest in one-half of the land. In our opinion, this should not be deducted.”

While this case is not conclusive upon the question, it strongly supports the position which I here take. I can see little, if any, distinction between an attempt to deduct annual taxes as a factor in determining the value of property, and an attempt to deduct an annual charge by way of an annuity for the same purpose.

I am of the opinion, therefore and so advise you, that the amount of this tax is not deductible from income when the income is used as one factor in determining the value of the property of an enterprise for profit. I am.

Yours very truly,

HARRY IRWIN,
Attorney General.