

April 20, 1922.

OPINION NO. 1016.

TAXATION: GENERAL LEASE.

No deduction may be allowed to a taxpayer for the amortization of the value of a general lease of public lands.

SAME: SAME.

No deduction should be allowed for the amortization of the value of buildings erected on leased public lands, but depreciation should be allowed.

SAME: A LEASE OF PRIVATELY OWNED LANDS.

A deduction should be allowed for the amortization of the value of a lease of privately owned lands.

SAME: UNCOMPLETED YACHT.

A power yacht uncompleted on the first of January, 1922, should be taxed on the basis of the value of labor and materials incorporated into it on that date.

SAME: LICENSE.

A license issued by the Commissioner of Public Lands covering public lands should be treated as a general lease and taxed accordingly.

Hon. A. Lewis, Jr.,
Treasurer, Territory of Hawaii,
Honolulu, T.H.

Dear Sir: I beg to acknowledge the receipt of your two communications of the 17th inst., together with a copy of a letter addressed to you by the Tax Assessor for the Third Taxation Division, requesting my opinion on certain matters relating to taxation.

First Question: Mr. Muir first inquiries as to whether or not the First Bank of Hilo, Limited, and the Hilo Iron Works Company, who are lessees of government land, should be allowed a deduction from the value of those leases for taxation purposes in the amounts sufficient to amortize the value of the lease at its expiration. In both of these cases it is stated that valuable buildings erected on the leased premises shall, on the expiration of the term of the lease, revert to the government and it is the contention of the taxpayers that the interest of the taxpayer in these leases and the buildings thereon should be amortized.

I am of the opinion that this contention of the taxpayer cannot be sustained. Section 385, R.L.H. 1915, provides in substance that the taxes on general leases shall be assessed as though the lands were owned in fee by the lessee and taxpayer. So far as the question of taxation is concerned these lands and the buildings thereon should be treated as though they were owned in fee by the lessee and taxed accordingly. Under this theory the taxpayer would be entitled to a deduction from the value of the buildings by way of depreciation under the statute, but not otherwise.

Second Questions The second question is similar to the first except that the leases cover privately owned lands and not public lands. In the recent case of C. T. Wilder vs. Hawaiian Sugar Company, the Supreme Court of this Territory decided that the value of a lease covering privately owned lands may be amortized and a deduction allowed. In the same case the Supreme Court decided that in fixing the value of the lease for amortization purposes the value of the buildings and

other improvements should not be included, as those items would be taken care of through depreciation.

Third Question: The taxpayer is building a power yacht which was not completed on January 1 of this year, and the taxpayer contends that no tax can be imposed until the yacht is completed. This contention cannot be sustained. While possibly it cannot be taxed as a yacht, yet it should be taxed as property to the extent of the value of the materials and labor incorporated into the uncompleted structure on January 1st of the current year.

Fourth Question: The Western Grain and Sugar Products Company and the Western Industries Company are occupying two pieces of public land in Hilo under a license issued by the Commissioner of Public Lands. These licenses are in legal effect leases for a definite term of years and the taxation of the occupied lands and buildings thereon should be handled in the same way as the property referred to in question Number One.

With regard to these licenses I have been and still am of the opinion that the Commissioner of Public Lands was without authority to dispose of these lands under this form of disposal except by sale at public auction, which I understand was not done in this case. I do not believe that the licensees could take advantage of this defect, however. The licenses would, in my opinion, be construed as a general lease of public lands and should be taxed accordingly. I am,

Yours very truly,
HARRY IRWIN,
Attorney General.