
July 11, 1935.

OPINION NO. 1621

TAXATION, GENERALLY; REDUC-
TION OF ASSESSMENT.

Once the tax roll is prepared and filed the Tax Commissioner is without power to make any reduction, for any cause, in an assessment; such power rests only in the Auditor and Attorney General and the courts.

SAME; REFUND OF TAXES.

After a tax has been paid no refund can be made, and a deduction of such

amount from taxes payable for the following year is void as an indirect attempt to do something that cannot be done directly.

Honorable Francis H. Smith,
Auditor, Territory of Hawaii,
Honolulu, T. H.

Sir:

Your favor of the 5th instant is at hand. We understand that the Honolulu Laundry Co., Ltd., in making its business excise tax return for the year 1933, erroneously computed the tax so that it paid \$131.02 in excess of the amount for which it was liable. We further understand that the taxpayer in its return for the year 1934 has deducted the sum of \$131.02, on the theory that it is entitled to such a deduction because of the erroneous computation and payment of the aforesaid tax,

No such deduction or method of adjusting taxes is provided for in the Business Excise Tax Law.

Section 2005, R. L. 1935 makes applicable to Chapter 63 of said Revised Laws (Business Excise Tax) all provisions of law relating "to assessment, payment or collection of income taxes and the powers and duties of the tax commissioner, treasurer or tax collector, in connection therewith." Section 2049, R. L. 1935 provides that "all powers, authorities and duties contained in Chapter 61 for levying, assessing, collecting, receiving and enforcing payments of the tax imposed thereunder * * * shall be severally and respectively conferred, granted, practiced and exercised for levying, assessing, collecting and receiving" the tax imposed under Chapter 65 (Income Tax). Hence, the provisions of Chapter 61 in respect to the levying, assessing, collecting and receiving of taxes are applicable to the Business Excise Tax.

Section 1931 of said Chapter 61 provides that in each year the Tax Commissioner shall prepare a list of all assessments made for each district, which shall be the list in accordance with which taxes shall be collected, "subject only to changes made by any court or other tribunal having jurisdiction, when appeals from assessments have been duly taken and prosecuted to final determination. It further provides that "except as specifically provided in this chapter, no changes in, additions to, or deduction from, such assessments shall thereafter be made, except to *add* thereto property or taxes which may have been omitted therefrom, *or to deduct therefrom adjustments on account of duplicate assessments and clerical errors, such as transposition of figures, typographical errors and errors of calculation.*" The Tax Commissioner's powers to change assessment lists is specifically limited to the above enumerated cases. He has no power to change any assessment after the same has been once made, except for the above mentioned causes.

Except for the provisions of law in respect to the Boards of Review, Tax Appeal Court and Supreme Court, the only other provision of Chapter 61, which permits of any change in the amount of any assessment, is that contained in section 1959 thereof, which provides that, after the preparation and filing of the tax rolls, "no adjustment of the amount reported to the auditor on the tax rolls, tending to *reduce* the amount of taxes billed, shall be entered upon the records until the same shall have been properly audited and the legality of the transaction determined by the auditor acting in conjunction with the attorney general in each case."

Once that the tax roll is prepared and filed the Tax Commissioner is without power to make any *reduction*, for any cause, in an assessment. Such power rests only in the Auditor and Attorney General and the courts.

As pointed out in our letter of January 18, 1935, there is no provision in the statute providing for an adjustment or refund of taxes after they have been paid.

If the deduction now claimed by the taxpayer were allowed, it would, in effect, be an adjustment or refund of taxes after they have been paid. An adjustment or refund which cannot be made directly cannot be made indirectly.

Hence, first because the deduction in question is not authorized by said Chapter 63 (Business Excise Tax Law), and, second, because such an adjustment or refund cannot now be made for the reasons (a) that the Tax Commissioner did not and cannot change the assessment, and (b) that the Auditor and Attorney General cannot adjust or refund taxes after they have been paid, we advise you that the instant deduction or adjustment is contrary to law and cannot be made.

Respectfully,

J. V. HODGSON,
Acting Attorney General.
