
October 26, 1937.

OPINION NO. 1659

TAXATION, NET INCOME; NET
PROCEEDS FROM PRIVATE OP-
ERATIONS CONDUCTED IN
ARMY RESERVATION, TAXA-
BILITY OF.

A contractor deriving income out of operations on work performed at Hickam Field, an army reservation, is subject to income taxes.

Mr. Earl Fase,
Deputy Tax Commissioner,
Territorial Tax Office,
Honolulu, T. H.

Dear Sir:

The above matter relates to the liability of a con-

tractor for net income tax arising out of operations stated by the contractor to have been carried on solely upon Hickam Field. Said contractor has been advised by his attorneys that he is outside of the jurisdiction of the Territory, their opinion being based upon a line of cases among which the contractor cites: *Dravo Contracting Co. v. Fox*, 16 F. Supp. 527; *Winston Brothers v. State Tax Commissioner*, 62 P. (2d) (Ore.) 7; *California v. Standard Oil Company*, 218 Cal. 213, reversed in 219 U. S. 242; *People v. Mouse*, 203 Cal. 782, 265 Pac. 944, *certiorari denied* in 278 U. S. 614; *Allen v. Industrial Accident Commission*, 3 Cal. (2d) 214, 43 Pac. (2d) 787.

We are of the opinion that this line of cases does not apply in the present situation. In *Surplus Trading Co. v. Cook*, 281 U. S. 647, 650-651, the court pointed out that the United States might own land for military purposes, yet not have exclusive jurisdiction over such land, and gave two examples which the court distinguished from land purchased by the United States with the consent of a state and falling within Article 1, section 8, cl. 17 of the Constitution of the United States providing for exclusive legislation by Congress over all places purchased by the consent of the legislature of a state for certain purposes. One such example was that of land purchased without the consent of the legislature of the state. In such a case, the court said, the reservation was within the operation of the laws of the state, unless there was a later and affirmative cession of jurisdiction by the state. Another example was that of a reservation established before the admission of a state but not excepted from the jurisdiction of the state at the time of admission. The court not only distinguished Camp Pike, which was purchased with the consent of

the state and squarely fell within the constitutional provision, from the examples previously given but also said of Camp Pike:

“Nor should it be confused with military or other reservations within a territory of the United States.”

The above language is particularly significant in view of the reliance placed by counsel for the collector of taxes in that case (see 74 L. Ed. 1093) upon the cases of *Cassels v. Wilder*, 23 Haw. 61, and *Rice v. Hammond*, 190 Okla. 419, 91 Pac. 698. In *Cassels v. Wilder, supra*, the Supreme Court of this Territory held that personal property located at Schofield Barracks was subject to the personal property tax, citing *Territory v. Carter*, 19 Haw. 198. The Court said:

“It is contended on behalf of the petitioner that the federal government having exclusive control of the said military reservation that persons and property thereon are not within the jurisdiction of the Territory for the purposes of taxation. * * *”

“The Organic Act, Sec. 55, grants to the Territory the power to legislate upon all rightful subjects of legislation, including that relating to taxation of persons and property. Section 1236, R. L., provides for the annual taxation of all real and personal property within each taxation district. The military reservation, upon which Schofield Barracks are located, is within the first taxation district, of which the respondent is assessor and collector. We have no territorial statute, and Congress has passed none, to which our attention has been called, exempting automobiles or other private property on military reservations from taxation. Congress undoubtedly has the power to enact a statute exempting automobiles owned by persons in the army from taxation, when kept upon a military reservation in a Territory, but it has not done so. In the absence of legislation, federal or territorial, exempting the automobile in question from taxation by the Territory of Hawaii, we hold that it is subject to taxation under the statutes of the Territory.”

In *Rice v. Hammond, supra*, the Supreme Court of Oklahoma held that cattle located on the Fort Sill Military Reservation were subject to tax. The court said:

“The sole contention of the plaintiffs is that, inasmuch as these cattle were located on a military reservation of the United States, even though such reservation is within an organized county of Oklahoma, they cannot be taxed under the territorial laws, asserting that a military reservation is under the sole legislative control of the United States. We have read counsel’s brief, and while it is true that, as long as Oklahoma remains a territory, Congress may legislate as to all matters pertaining to this reservation and exclude the territorial authorities from exercising any control thereof, it has not done so. By section 6 of the organic act of the territory of Oklahoma, it is provided: ‘That the legislative power of the territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States, but * * * no tax shall be imposed on the property of the United States, * * *.’ Under this express grant of power from Congress, the territory may subject all property within the territory to taxation except the property of the United States. It is immaterial where the property is located. If it is not the property of the United States, the Legislature may require it to bear its just proportion of the burdens of government. * * *”

We have concluded that the United States Supreme Court applies the constitutional provision, Art. 1, sec. 8, cl. 17, as to the exclusive jurisdiction of Congress, only in cases which squarely fall within it, and that a military reservation within a territory is not such a case. See Opinion of this office No. 1616. See also as to military reservations within Territories: *Territory v. Carter*, 19 Haw. 198; *Territory v. Burgess*, 8 Mont. 57, 19 Pac. 558; *Reynolds v. People*, 1 Colo. 179.

While it is also established that a state may cede her jurisdiction to the United States, as the court pointed out in *Surplus Trading Co. v. Cook*, *supra*, and while it may be assumed that in a case of a territory Congress may take such jurisdiction from the territory instead of the legislature of the territory surrendering it, nevertheless Congress has not so provided. In providing for Hickam Field Congress simply enacted:

“That the Secretary of War is hereby authorized to cause condemnation proceedings to be instituted for the purpose of acquiring certain tracts of land in the vicinity of Fort Kamehameha Reservation, Territory of Hawaii, hereinafter described, for use as a flying field, and that a sum not exceeding \$1,145,000 is hereby authorized to be appropriated, out of any money in the

Treasury not otherwise appropriated, for the acquisition of the fee simple title to said land either by purchase or condemnation, * * *.” 45 Stat 750, c. 754.

Pursuant to the above statute Hickam Field was acquired by condemnation proceedings. Certainly there was nothing in this statute or in these proceedings to work a change in the legislative or other jurisdiction over the land condemned.

Since Hickam Field was acquired through the condemnation of private lands there is nothing in the present matter which involves either the cession of public lands by the Republic of Hawaii under the joint resolution of annexation, or section 91 of the Organic Act (48 U. S. C. A. sec. 511) relating to the possession, use and control of such public lands; moreover, the reasoning of the Supreme Court in *Territory v. Carter*, *supra*, is sufficient to sustain the Territory’s jurisdiction over military reservations formed from such public lands.

For these reasons we are of the opinion that the net income arising from operations conducted at Hickam Field is taxable by the Territory.

Very truly yours,

RHODA V. LEWIS,
Deputy Attorney General.
