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Op. 56-25

February 24, 1956

Honorable Earl W. Fase
Tax Commissioner
Territory of Hawaii
Honolulu, Hawaii

Dear Sir:

This is in response to yours of February 2, 1956, seeking our opinion on certain questions regarding the interpretation of Act 207, Session Laws of Hawaii 1955. Following is a restatement of the questions submitted with our opinion thereon:

1. Does "remit" as used in Act 207 Session Laws of Hawaii 1955, mean a refund of taxes for the year 1955?

It is our opinion that the word "remit" as used in Act 207, Session Laws of Hawaii 1955, does not contemplate a refunding of taxes paid for the year 1955. The word "remit" connotes a forgiveness or annulment in the nature of a pardon. State v. Fisher, 104 A.2d 403, 405, 204 Md. 307. On the other hand, the word "refund" has a broader meaning and connotes a paying back repaying or restoring of money paid. Cash v. Portland Ry., Light & Power Co., 179 P. 909, 910, 92 Ore. 81.

If the legislature had intended the word "remit" to include a refund of taxes paid for the year 1955, then it certainly would have made provision for the repayment of said money by appropriating a fund therefor or making other provision as to where the money would be obtained, as has been done in other similar legislation wherein the legislature has specifically noted the difference between a remission and a refund. See Act 88, Session Laws of Hawaii 1953.

Since the word "remit" does not include a refund, it would be a useless act to remit those real property taxes which have already been paid, for there would be no way of refunding the money paid. Section 5130, Revised Laws of Hawaii 1945, as amended would not cover a refund in this situation, and further legislative action is therefore necessary in order to make a refund of real property taxes paid for the year 1955. However, the tax commissioner is obliged to remit gross income taxes

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for the year 1955 (the language of Act 207 being mandatory), for such would not be a useless act due to the fact that a refund of such taxes can be made under the provision of section 5468, Revised Laws of Hawaii 1945, as amended. This refund shall be made by either a territorial auditor's warrant or by way of a credit on future accruing gross income taxes.

2. Is a taxpayer who acquires new land or a new business subsequent to May 27, 1955, the effective date of the Act, entitled to a remission of taxes accruing from the new land or new business?

Act 207 provides in pertinent part as follows:

"...the tax commissioner shall remit ...(1) all real property taxes ... due and payable by said taxpayer on account of any real property on the island of Hawaii, and (2) all taxes due under the provisions of chapter 101 of the Revised Laws of Hawaii 1945, as amended, from said taxpayer on account of any trade or business conducted by said taxpayer on the island of Hawaii ..."

Although this Act differs in its concept from the usual type of tax relief granted as the result of a disaster, the statute seems abundantly clear that the remittance is to extend to taxes arising from any property or any business acquired so long as the property or the business is located on the island of Hawaii. It is our opinion that the phrases "any real property" and "any trade or business" as used in the statute refer to property or a business on the island of Hawaii acquired by the taxpayer before or after the effective date of Act 207.

Respectfully yours,

HAROLD W. NICKELSEN
Deputy Attorney General

APPROVED:

RICHARD K. SHARPLESS
Acting Attorney General

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