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Op. 56-43

March 29, 1956

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

Dear Mr. Fase:

This is in response to yours of March 29, 1956 seeking our advice on two questions of interpretation of Act 207, Session Laws of Hawaii 1955. Following are the two questions submitted, with our opinion relating thereto.

Who should be considered the taxpayer and entitled to a remission of taxes under the terms of a lease whereby the lessee pays real property taxes directly to the tax office?

The term "taxpayer" as used in the second paragraph of section 2, Act 207 in the clause reading "(1) all real property taxes for said year 1955 and thereafter as above provided due and payable by said taxpayer . . ." as it relates to real property taxes, must be read in conjunction with Chapter 94, Revised Laws of Hawaii 1945. To that extent, it is our opinion that the word "taxpayer" is synonymous with the words "owner or owners" as used in section 5141, Revised Laws of Hawaii 1945, as amended. I am sure that the word "owner" is well understood by your office, and is the person who is annually assessed under the provisions of Chapter 94. A person who pays the actual taxes on behalf of the owner is not the taxpayer and is not entitled to a remission under Act 207. In other words, in order that there may be a remission of taxes under the provisions of Act 207, there must co-exist in the same person an assessed tax liability and a certified amount of loss.

Therefore, in answer to your specific question, a lessee who is bound by contract with his lessor to pay the taxes assessed against his lessor is not the taxpayer entitled to a remission under Act 207. The lessee will be obliged to recoup any certified loss he may have against taxes which have been assessed against him. Of course, a lessee may also be a taxpayer (owner) in the event that the requisites of section 5141 are present.

Who should be considered the taxpayer and entitled to a remission of taxes when corporation "C" leases to corporation A which corporation in turn subleases to corporation B? In both leases the lessee (and sublessee) are bound to pay the real property taxes.

Again, it is our opinion that a remission under Act 207 can only be made to the "owner or owners" and therefore corporation C would be entitled to the remission (assuming that it is the owner) and the contractual relations between A, B and C would be of no effect.

Respectfully yours,

HAROLD W. NICKELSEN
Deputy Attorney General

APPROVED:

EDWARD N. SYLVA
Attorney General