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Op. No. 64-39

STATE OF HAWAII
DEPARTMENT OF THE ATTORNEY GENERAL
HONOLULU, HAWAII
July 29, 1964

Honorable Edward J. Burns
Director of Taxation
State of Hawaii
Honolulu, Hawaii

Attention: Mr. August H. Landgraf, Jr.
Assistant Director
Property Technical Office

Dear Sir:

This is submitted in response to your request for advice, generally, as to the proper procedure the department of taxation should follow in cases where a taxpayer, not an owner of record, requests the correction, change or revision of tax maps, with respect to dimensions and ownership, for real property taxation purposes.

As stated by you, the request arises, specifically, because of a claim by certain taxpayers to ownership by accretion of a certain 18,000 square feet parcel of land. The taxpayers have requested a revision of the tax maps to indicate the change in dimensions and to show their ownership of the accreted portion of the land. They further request that a revised tax assessment bill be mailed to them. No judicial determination of title or boundary has been made and there is no document of conveyance on file in the Bureau of Conveyances.

There does not appear to be any statute specifically dealing with the procedure to follow in cases of this kind. The pertinent portions of the sections of our statutes applicable to such cases, however, appear to be the following:

"§ 128-4. Assessment of property; to whom in general. The real property shall be

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assessed in its entirety to the owner or owners thereof; . . .

"Lessees holding any real property under a lease for a term of fifteen years or more and having an option . . . to purchase the fee, and persons holding any real property under an agreement to purchase the same, shall be considered as owners . . .; provided the lease or the agreement to purchase (1) shall have been recorded . . ." (Revised Laws of Hawaii 1955, as amended by Act 142, Session Laws of Hawaii 1963, and now in effect.)

"§ 128-4. Assessment of property; to whom in general. Real property shall be assessed in its entirety to the owner thereof; provided that where land has been leased for a term of fifteen years or more, the real property shall be assessed . . . to the lessee or his successor in interest . . . and such lessee or successor in interest shall be deemed the owner . . . Persons holding any real property under an agreement to purchase the same, shall be considered as owners . . .; provided the agreement to purchase (1) shall have been recorded . . ." (Revised Laws of Hawaii 1955, as amended by Act 21, Session Laws of Hawaii 1964, and to take effect on January 1, 1965.)

"§ 128-7. Assessment of property of unknown owners. The taxable property of persons unknown, or some of whom are unknown, shall be assessed to 'unknown owners,' or to named persons and 'unknown owners,' as the case may be. . . . Such property may be levied upon for unpaid taxes." (Revised Laws of Hawaii 1955.)

"§ 128-8. Maps. The [department] shall provide, for each taxation division and district, maps drawn to appropriate scale,

showing all parcels, blocks, lots or other divisions of land based upon ownership, and their areas or dimensions, numbered or otherwise designated in a systematic manner for convenience of identification, valuation and assessment. Such maps, as far as possible, shall show the names of owners of each division of land, and shall be revised from time to time as ownerships change and as further divisions of parcels occur. . . ." (Revised Laws of Hawaii, 1955, as amended.)

"§ 128-11. Abstracts of registered conveyances, copies of corporation exhibits, etc., furnished [director]. For purpose of assisting the [director] and assessor in arriving at a correct valuation of the property within each division, the registrar of conveyances, or any other agency so requested by the [director] shall furnish to the [director] monthly, quarterly or as otherwise as required by him, an abstract of the conveyances of, or other documents affecting title to, or assessment of, real property in each division, which have been entered for record at the bureau of conveyances, executed, or filed, as the case may be, during the period covered by such abstract. The treasurer shall each year furnish to the [director] as requested, copies of the annual corporation exhibits of any or all corporations owning real property in any division or any information contained in such exhibits." (Revised Laws of Hawaii 1955.)

The above-quoted sections should all be relied upon in aid of the interpretation to be given the chapter on real property taxation, with respect to the preparation of tax maps, for the rule of statutory construction is, as stated in Kamanu v. E. E. Black, Ltd., 41 Hawaii 442 (1956), that statutes in pari materia (on the same subject) should be construed together to ascertain legislative intent and policy. Further, section 1-21 of the Revised Laws of Hawaii 1955 provides as follows:

"§ 1-21. Laws in pari materia. Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called in aid to explain what is doubtful in another."

Interpreted together, the determination of what procedure the department should take in cases such as that with which we are concerned here appears to hinge on the definition of the term "owner" which appears in several of the sections. Section 128-8 provides that tax maps shall show the names of "owners" and section 128-4 provides that real property shall be assessed to the "owner" or "owners" thereof.

With respect to the definition to be given the term "owner" as it appears in tax statutes, it is stated in 3 Cooley, Taxation § 1097 (4th ed. 1924) as follows:

"§ 1097. - Who is owner. In assessing property, the owner of record is presumably the true owner. By the owner of property for the purpose of assessment is meant the legal . . . owner. . . ."

In 51 Am.Jur. Taxation § 682 (1944) at pages 639 and 640, it is also provided as follows:

"§ 682. Owner. - Usually the tax assessment laws require that the assessment of taxes be made in the name of the person owning the property with respect to which the tax is levied, on the date to which assessments for the current year are referable. Accordingly, a tax on real estate ordinarily should be assessed to the person appearing of record to be the owner or holder of the legal title, and a tax to a person who is not such record owner is void." (Emphasis added.)

The general rule of law, then, appears to be that the word "owner" shall be defined to mean the holder of the record title to real property. Moreover, by the provisions of section 128-11, herein quoted, it appears that our legislature rather clearly intended that the director should rely on record title

to determine ownership of real property for taxation purposes. Said section expressly directs the registrar of conveyances to furnish to the director "as required by him" an abstract of documents affecting title to real property. What little case authority there is also seems to support the position that in attempting to ascertain ownership of real property for tax purposes the assessor may rely on the record title, Roberts v. First National Bank, 8 N.D. 504, 79 N.W. 1049 (1899), and that even in cases involving conflicting titles the assessor may assess in the name of the owner of record. Lisso & Bros. v. Police Jury of Natchitoches Parish, 127 La. 283, 53 SO. 566, 31 L.R.A. (N.S.) 1141 (1910).

The provisions of section 128-4, those which are now in effect and those which will go into effect in 1965, on their face, would appear to have called forth the application of the legal maxim "expressio unius est exclusio alterius"; i.e., the mention of one thing implies the exclusion of another. Thus, because the amendments expressly specify that before a lessee or a purchaser, presently, or only a purchaser, after January 1, 1965, besides the holder of the fee, can be considered to be an owner, there must first have been a recordation of the lease or the agreement to purchase, it might be argued that the legislature must have intended that in all other cases a person claiming to be the owner need not have recorded his evidence of ownership to be recognized as the owner for taxation purposes.

Said maxim, however, is applicable only under certain conditions and, as stated in 50 Am.Jur. Statutes, § 246 (1944) at page 241, it is applied:

" . . . to assist in arriving at the real intention of the lawmakers, where such intention is not manifest, and only for such purpose. It may not be used to defeat or override clear and contrary evidences of legislative intent, but must yield whenever a contrary intention on the part of the lawmaker is present."

In the instant case, had the legislature intended that record title was not to be the determinant of fee ownership, for taxation purposes, this could have been clearly manifested by a repeal of section 128-11. The legislature, in enacting both the old and new sections

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128-4, not only did not repeal section 128-11, it retained the provisions therein in their entirety. It would appear, therefore, that the legislative intent that record title is the determinant of fee ownership has not only been retained, it has been expressly reiterated especially in the case of lessees and purchasers, presently, and only in the case of purchasers after January 1, 1965, that the records shall determine who the lessee or purchaser is.

On the basis of the foregoing, it appears that the director of taxation is under no legal duty to comply with requests by taxpayers to correct or revise tax maps, with respect to dimensions and/or ownership, unless such taxpayers are able to furnish proof of record title. More specifically, in the case of taxpayers claiming ownership of land by way of accretion or adverse possession, there would need to be a judicial determination of title before they can be considered to be "owners."

All this is not to be taken to mean, however, that the State has no power to tax accretions, for in the case of Anderson-Tully Co. v. Chicago Mill & Lumber Co., 175 F.2d 735 (1949), the court held that a State has the power to tax accretions to riparian land as soon as they appear and as they expand. The problem, however, is as to whom any real property assessment should be made in such cases. This problem appears to be taken care of by the provisions of section 128-7, herein quoted, which provides that taxable property of persons unknown shall be assessed to unknown owners.

In conclusion, and in answer to your request, the proper procedure to follow, where taxpayers request the correction, change or revision of tax maps, appears to be for the department to have such taxpayers submit proof of record title as to ownership, where the request is for change of ownership, and to submit proof of record title as to the parcel and its boundaries, where the request is for change in the dimensions of the parcel. It is our view that without proper proof the department is under no legal duty to comply with such requests.

Respectfully submitted,

APPROVED:

/s/ Ralph W. Kondo

RALPH W. KONDO
Deputy Attorney General

/s/ Bert T. Kobayashi
BERT T. KOBAYASHI
Attorney General

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