

Treasurer has authority to allow appeals when the time limited by law within which an appeal must be taken has expired. The tax appeal court has no jurisdiction unless the appeal was filed on or before May 1st and consent of the parties cannot confer it. 3 Corp. Jur. 370.

It is doubtful whether the Assessor could stipulate, prior to May 1st, that an appeal could be filed after May 1st, but numerous authorities hold that no extension for filing appeals, bills of exceptions, etc., can be granted after the time for filing the same has elapsed. *Kapiolani Estate v. Peck & Company*, 14 Haw. 580. *Kauhane v. Laa*, 19 Haw. 526. *Estate of Kamahala*, 12 Haw. 264.

It is well to bear in mind that a so-called tax appeal is not strictly an appeal but the institution of the legal proceeding. Under such circumstances the Government official cannot waive a statutory limitation upon the action. *Peacock v. Republic of Hawaii*, 11 Haw. 404.

“We need consider only the question of the statute of limitations. At the first hearing it was expressly stated by the Attorney General on behalf of the Government that the statute was waived. The Court, however, upon consideration, took the view that the statute could not be waived by the executive branch of the Government, but that the Legislature alone had authority to determine what actions may or may not be brought against the Government—the Government in this sense being the state, and not merely the executive branch of the state, and the legislature being the proper mouthpiece of the state in matters of this kind. It is the duty of the court of its own motion to dismiss an action against the Government if it appears not to have been brought within the time limited by the statute.

“In this respect an action against the Government differs from an action against a private person. There is no right to sue the state except so far as permitted by the state, and if the state has permitted actions to be brought against it only within a certain time, the court should not entertain an action brought after the expiration of that time. But an action may be brought against a private person and the court may entertain it without special permission from the state through its legislature, the statute limiting this right being merely a defense which the defendant may insist on or waive at his pleasure. *Finn v. U. S.* 123 U. S. 231; *U. S. v. Utz*, 80 Fed. Rep. 848.

It is unfortunate that the wireless of Theo. H. Davies and

May 20, 1916

OPINION NO. 518.

TAXATION:

The statutory limitation upon tax appeals may not be waived by an executive officer.

APPEALS:

Tax appeals must be filed on or before May 1st.

Henry C. Hapai, Esq.,
Acting Treasurer, Territory of Hawaii,
Honolulu, T. H.

Dear Sir: All tax appeals must be lodged with the Assessor on or before May 1st. Neither the Tax Assessor nor the

does not alter the fact that the appeal was not filed within the statutory period and the further fact that it was through no fault of the government official.

Yours very truly,

INGRAM M. STAINBACK,
Attorney General.