

October 19, 1917.

OPINION No. 693.

TAXATION:

Costs on compromise: In the event of a compromise of a tax appeal before trial, there shall be returned to the appellant, from the costs deposited, a part thereof proportionate to the amount for which the appellant shall prevail.

O. T. Shipman, Esq.,
Tax Assessor, Third Division,
Hilo, Hawaii.

Dear Sir: Complying with your verbal request for my opinion as to the disposition of costs deposited upon a tax appeal when such appeal is compromised before trial, I beg to submit the following:

Section 1278, R. L. 1915, provides:

“Taxation of costs. In the event of an appeal or objection being sustained in whole, the costs deposited shall be returned to the appellant; but if the appeal or objection shall be sustained in part only, then a part of the costs paid proportionate to the amount for which the appellant shall obtain judgment shall be returned to him.

This section shows the intent of the Legislature to be that the appellant shall forfeit a part of his deposited costs proportionate to the amount for which he shall pay taxes over and above his return. The fact that the appeal is compromised before trial does not alter the situation, as such compromise is simply a confession of judgment by the appellant to the amount in excess of the original tax return

Very truly yours,

CORNELL S. FRANKLIN.

Deputy Attorney General.

Approved:

Ingram M. Stainback,
Attorney General.