May 25, 1922.

OPINION NO. 1020.

TAXATION; NOTICE OF RAISE IN ASSESSMENT.

The notice of raise in assessment must be served on the taxpayer as provided by Section 1268, R.L.H. 1915, as amended, and errors in the notice must be corrected, if at all, on or before the 10th day of April in each year.

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

Dear Sir: I beg to acknowledge the receipt of your communication of the 15th inst., together with a copy of a letter addressed to you by the Tax Assessor, Third Division, both relating to an error which has occurred in the assessment of the tax on the property of the Kohala Sugar Company.

It appears from these communications that the Kohala Sugar Company rated its property for taxation purposes as being of the value of $400,000.00. The Board of Equalization advised that the value be raised to $850,000.00, and the Tax Assessor for the Third Division concurred in the suggestion and actually did assess the property in that sum as shown by his books.

In notifying the company, however, of the raise in value, the date of the notification being April 7, 1922, he erroneously stated the figure to be $700,000.00 instead of $850,000.00, which error was not discovered until too late for correction.

It seems also that Mr. Woods, the deputy assessor, on April 22, 1922, sent a notice to the company showing the correct assessment.

On the l2th day of May, the agent of the Company called on the deputy assessor for the purpose of paying the tax and called his attention to the discrepancy between the figures in the notice of raise in assessmemt as set forth in the notice of April 7, 1922, and the notice given by the deputy assessor on April 22, 1922.

Under these circumstances the company refuses to pay a tax on any valuation over $700,000.00. The Tax Assessor claims that this error was a mere irregularity and that under Section 1285, R.L. H. 1915, the Company is obligated to pay a tax on a valuation of $850,000.00 as shown on the books of the assessor.

With this latter contention I cannot agree. Section 1286, R.L.H. 1915, as amended by Act 222, S.L. 1917, imposes a specific duty on the Assessor to notify the taxpayer "on or before April 10 in each year" of any such raise in assessment.

The particularity with which the statute describes the method by which and the time when this notice must be given excludes any theory that its provisions are directory merely. In my opinion they are mandatory and must be followed.

Section 1268 R.L.H. 1915, the Section now under consideration, was Section 1243, R.L. 1905, and while it has never been directly construed by the Courts it has been referred to in connection with a corresponding section in the Income Tax Law.

In "Tax Assessor vs. Ewa Plantation Company," 18 Hawn. 530, at 539, the Supreme Court in referring to the corresponding section in the Income Tax Law, said:

"We are of the opinion that Section 1287 (Income Tax Law) requires notice of an assessment in case of the taxpayer's return to be given on or before April 1 in each year following the corresponding section of the property tax act (Section 1243, R.L. 1905)."

It is clear to me, therefore, that the government is bound by the notice given on April 7, and can collect the tax only on a valuation of $700,000.00.

I return herewith Mr. Muir's original letter to you. I am,

Yours very truly,

HARRY IRWIN,

Attorney General.