

---

February 26, 1925.

OPINION No. 1204.

TAXATION:

ASSESSMENTS UPON OMITTED PROPERTY. Where assessments are made upon property omitted from the assessment or tax lists of previous years, (1) It is not to be considered there have been delinquencies in paying taxes which had not been assessed, (2) the property placed upon each year's list should be subjected to the tax rate of that year, and (3) the amounts received as taxes pursuant to the assessments made upon omitted property should be retained by the Treasurer to satisfy the requirements of each county or city and county for the next following year.

Honorable Henry C. Hapai,  
Treasurer of the Territory of Hawaii,  
Executive Building,  
Honolulu, Hawaii.

Sir:

In a letter dated today you write:

“There are three questions as to which I request your advice, following a consideration by me of your opinion, dated the 5th in-

stant, wherein you stated that it was obligatory upon each Assessor to make the necessary additions to his assessment or tax lists for the years 1910 to 1922, inclusive, to cover all moneys on hand in the banks which were improperly omitted from those lists.

(1) Are these taxes to be considered delinquent?

(2) When the additions to those assessment or tax lists have been made, should the tax rate be that of 1925?

(3) What disposition should be paid of the amounts received as taxes pursuant to these proposed assessments upon property not previously assessed?

I desire to take this matter up at the meeting of the Board of Equalization, which will be called to order at 9:30 A.M., February 27, 1925, in the office of the Treasurer of the Territory of Hawaii."

Your first question is answered in the negative.

Sec. 1288 of the Revised Laws 1915, provides that property taxes "shall be due and payable on and after January 1 in each year." This provision creates an anomalous condition, that taxes should be considered payable long before assessments have been made and even before taxpayers have made returns of their property for taxation purposes. Notwithstanding this provision it does not appear to me that taxes payable upon late assessments of omitted property should be considered otherwise than according to the general rule that no tax is payable until there has been an assessment. Sec. 1289, as amended, provides that all property taxes remaining unpaid after certain dates shall be delinquent. A tax does not remain unpaid if it was not payable at all and it is not generally considered that a tax is payable if no assessment has been made.

Your second question is as to whether the tax rate for 1925 should be applied to the personal property of the banks now to be added to the assessment or tax lists for the thirteen years from 1910 to 1922, inclusive.

My answer to this question is in the negative also.

The statute here involved, Sec. 1267, reads:

"Addition of unreturned property. Each assessor shall at any time add to his assessment or tax list for the year or years when

omitted, any person or property theretofore omitted from assessment and taxation; notice thereof shall be given to the owner, if known, within ten days after such addition; and any such notice addressed to him at his last known place of residence and sent by mail, postage prepaid, shall be a sufficient notice."

As the omitted property is to be added to the several assessment or tax lists of the thirteen years above mentioned, it follows that the property upon each list will be subject to the tax rate of that year.

Although the case of the Oahu Railway & Land Company, Limited, vs. Wilder, 27 Hawaii 336, involved income, rather than property, taxes, the concurring opinion therein of Mr. Justice Perry indicates that the foregoing statement of the law is correct.

To the third question the answer is found in Sec. 1299, which contains the following:

"The territorial treasurer shall retain all funds collected on account of real and personal property taxes from any county or city and county during any calendar year in excess of the amounts sufficient to satisfy the requirements of such respective counties or city and county for any calendar year as set forth in the tax rate calculations for such calendar year and apply the same to satisfy the requirements of such county or city and county for the next following year and thereby reduce the tax rate of such county or city and county for said next following year."

Respectfully,

JOHN ALBERT MATTHEWMAN,

Attorney General.