

June 19, 1925.

OPINION No. 1228.

TAX EXEMPTION:

An exemption from taxation under the statute taking effect in the month of April, does not exempt the property mentioned from taxation for the current year, all taxes becoming fixed on January 1st.

TAXES: DEFENSES AGAINST COLLECTION OF SAME:

Where the Territory, as lessee, covenants to pay all taxes on leased property, and fails to do so, the lessor has a defense, by way of equitable set-off, to any suit brought by the Tax Assessor to enforce against the lessor payment of said taxes.

Honorable Charles T. Wilder,
Tax Assessor, First Taxation Division,
Honolulu, Hawaii.

Dear Sir:

Replying to your oral request for an opinion as to your duties in connection with enforcing from the Bishop Estate the collection of taxes on the Marine Railway Site, in view of the passage of Act 106 of the Session Laws of 1925, I beg to advise you as follows:

While the legislators unquestionably intended to fully exempt the Marine Railway Site from taxation and intended that no further payment of taxes thereon should be demandable, the language of the Act is such that taxes for the year 1925 are not included in the exempting provisions. You have, therefore, rightfully held that taxes for the year 1925 (since the same accrue January 1, 1925) are rightfully assessable against this Marine Railway Site, in spite of said Act 106.

However, it is my opinion, and I so advise you, that you should not attempt to enforce collection of the 1925 taxes on this property.

The fact that, under the lease, the Territory, as lessee, has assumed the payment of all taxes, would operate, as I believe, as an estoppel in favor of the Bishop Estate and against the Territory in any attempt by the latter to enforce the collection of these taxes; and I am of the opinion that, in a suit instituted by you to collect same, the Bishop Estate could plead an equitable setoff as a defense to the action.

For the reason, therefore, that the Bishop Estate has, in my opinion, a defense to any suit brought to enforce the collection of these taxes, I advise you against attempting enforcement of same. The 1927 Legislature will undoubtedly meet this situation and provide, by enactment, a specific exemption for the year 1925—as they would unquestionably refund whatever amount the Bishop Estate might pay on account of taxes for 1925.

The collection of these taxes, therefore, should not be attempted; they should remain in abeyance and while, of course, they become legally “delinquent”, you should await the convening of the Legislature of 1927 to correct the situation.

Very respectfully yours,

WILLIAM B. LYMER,

Attorney General.