

October 9, 1925.

OPINION No. 1265.

TAXATION: ASSESSMENT:

Where deductions in income taxes have been improperly allowed in prior years, the Tax Assessor upon discovery of the impropriety of such deductions may go back and re-assess the omitted income.

Honorable E. S. Smith,  
Acting Treasurer, Territory of Hawaii,  
Honolulu, Hawaii.

Dear Sir:

Your letter of October 6th requesting the opinion of this office as to legal procedure under Sections 1285 and 1347 R. L. 1925, relating to assessment of additional income taxes has been referred to me for answer.

I beg to advise you that this office considers that the very point in issue has been passed upon in the recent cases of O. R. & L. Co., vs. Wilder, 27 Haw., 336 and Re Taxes O. R. & L. Co., 28 Haw. 261.

The latter case was an outgrowth of the decision of the court of the first case and was concerned with the assessing and taxing in 1925 of certain income deductions which were improperly allowed in 1921. In the case last reported in 28 Haw., the conclusion reached by the court was an adoption of the conclusion voiced in the opinion of Mr. Justice Perry in the earlier case. He there said:

"This item was allowed as a deduction in the return for 1921 upon income of 1920 either because both the assessor and the taxpayer misunderstood the requirements of the law upon the subject or else because both, although having a correct understanding of the law nevertheless agreed to disregard its requirements and to follow another system of return and assessment. In either event, it is inconceivable

to me that the law would, under these circumstances, permit that portion of the taxpayer's income to escape taxation."

The court in the case in 28 Haw. said, regardless of the provisions requiring the assessor to advise the taxpayer on or before April 10 in each year as to any raises of assessment above that stated in the return of the taxpayer, that the tax assessor may go back and re-examine and if necessary, re-assess by adding income omitted.

We therefore beg to advise you that the procedure contemplated by Mr. Harold Hill of the Tax Office assessing a tax upon certain income improperly allowed as deductions in the period from 1919 to 1923, is proper.

Very truly yours,

MARGUERITE K. ASHFORD,  
First Deputy Attorney General.

APPROVED:

WILLIAM B. LYMER,  
Attorney General.