March 30, 1926.

OPINION No. 1336.

INCOME TAX: SUBSISTENCE AND QUARTERS FURNISHED, WHETHER TAXABLE:

To constitute taxable income, subsistence and quarters furnished employees must be clearly intended as a part of the compensation of such employees, and not an incident of the employment furnished as a matter of the employer's convenience; and the quarters of plantation laborers, the subsistence and quarters of hospital nurses and quarters furnished rural school teachers held not to be income within the meaning of the Income tax statute.

Honorable Henry C. Hapai,
Treasurer, Territory of Hawaii,
Honolulu, Hawaii.

Dear Sir:

Under date of October 6th, 1925, I rendered a short opinion (No. 1260) to E. S. Smith, Esq., then acting treasurer, the syllabus of which reads as follows:

"INCOME TAX: BOARD AND LODGING AS A 'GAIN' TAXABLE UNDER THE STATUTE:

The value of articles and/or accommodation received in kind, in addition to cash received *as compensation* for personal services rendered, constitutes taxable income."

In the body of that opinion I definitely state the following:

"I beg to advise you that in my opinion the value of board and room, etc., furnished *as part of the compensation* of any employee, should be taxed as income."

And further on in said opinion I expressly state that "even under the wording of Section 1388, I should hold that the provisions that an income tax shall be levied . . . upon the *gains* from every . . . employment . . ." would include "the value of board and lodging furnished *as part of the employees' compensation* and *not* merely as *a matter of the employer's convenience*".

I still hold to the correctness of my views expressed in said opinion, and reiterate my belief that the value of board and room, etc., *furnished as part of the compensation of the employee*, and not furnished *as a matter of the employer's convenience*, is subject to the provisions of our income tax law.

However, I learn that certain deputy assessors, throughout the other islands (and possibly, also, on Oahu) are demanding that returns be made, on forms prescribed by the Treasurer, of amounts "paid in salaries or compensation of more than $600" (under subsection 5 of Section 1392 of the Revised Laws) apparently under the belief that the quarters allowed to all laborers on all the plantations constitute a "gain" which may be assessed as "income".

Furthermore, I am informed that in the case of nurses connected with hospitals, and in the case of teachers in the outlying islands (who, in many instances, are furnished with quarters) it is being insisted upon by certain deputy tax assessors, that returns should be made and taxes levied upon the quarters (board, lodging, lights, etc.) thus furnished, as "taxable income".

While the proposition of law laid down by me in said opinion of October 6, 1925, is unquestionably sound (that the value of board and room, etc., "furnished as part of the compensation of the employee" —and not merely as a matter of the employer's convenience, represents taxable income) I have given considerable further thought to the practical workings of this specific income tax provision as applied to (a) laborers' quarters, lights, etc., on plantations, (b) quarters furnished to nurses in hospitals and (c) quarters allowed to school teachers in rural districts as an inducement to them to teach in such localities rather than in the larger schools—and I am of opinion that in the three classes of cases just mentioned, the furnishing of board and room, lights, quarters and the like, do not furnish instances of "compensation", within the meaning of the income tax law, so that the same should not, in my opinion, be returned for income tax purposes by either employer or employee and no income tax should be levied thereon.

A recent opinion of the U. S. Court of Claims, and all the more recent Income Tax Unit decisions, show that the Federal authorities have adopted a definite theory (overturning certain earlier holdings) to the effect that anything, in the nature of quarters and subsistence, which is not *clearly* and *directly* income (but which may be held to be *an incident of the employment)* is *not* taxable as income.

Section 1392 of the Revised Laws of Hawaii 1925 relating to income taxes provides that income tax returns made by corporations shall include the return, on forms prescribed by the Treasurer of the Territory, of certain matters relating to receipts and expenses, etc., of the corporation as a taxpayer, and also:

> "Fifth: The amount paid in salaries or compensation of more than six hundred dollars ($600.00) to each person employed during each taxation period, and the name and amount paid to each."

This year the Assessor has distributed a printed form (Form B-21, -12-25) entitled "Information Return of Amounts Paid to Employees during 1925 as required by Sec. 1392, R. L. H. 1925", and under

subdivision 8 of the Note at the head of the form it is stated:

> "8. Board, lodging, board and lodging, living quarters, heat, light, etc., furnished to employees is taxable income to them as to the value thereof and should be reported by you in addition to salaries, wages, bonus, etc."

The question is now presented as to whether or not employers are required to furnish the information called for by subdivision 8 just quoted. And this, in turn, brings up the question as to whether such items are taxable under the provisions of the income tax law.

The facts, as I understand them, are that it is a system common to practically all sugar plantations for the plantations to provide quarters for laborers and employees on the plantation lands, principally in camps established in convenient localities, and also to provide fuel, hospital and medical services, etc., without charge to the employees. There are various classes of buildings furnished as quarters for employees, and these vary in type and value. In some cases one or more unmarried men may occupy one room in a plantation house and again a man with a family occupy an entire house. The houses furnished to some employes (such as lunas and certain skilled employees, etc.) are of better type and greater value than the camp buildings for laborers, but all buildings vary in many ways as to character and value. There is no arrangement, however, with any employee, as to what quarters he may occupy; each being assigned to one house or another, with no reference to any rental or occupational value any house may have, and no understanding that the occupation of the quarters constitutes any part of the compensation of the employee. Employees are assigned to such houses and in such localities as the convenience of the plantation business

may require, and subject to change both as to house and location on the plantation, at the will of the employer, and no differences in the substitute house as to size or convenience or because of added or lost advantages incident to location are rated as entering into the employee's compensation. Neither are such advantages as may accrue to the employee through not having to pay rent or the cost of fuel, etc., as he might if living elsewhere independently, taken into consideration by the employer as an element of compensation; the employee enjoys them while he remains in the employ by the plantation whether he is working full time or not, and whether working on contract on one wage basis or doing day labor on another wage basis.

All employees, whether during regular working hours or not, are subject to call at all times in case of necessity. In short, the whole system is such that it may properly be said that it is for the convenience of the employer, and requisite for the maintenance of an efficient working organization and carrying on of the plantation business—all of these facilities being indispensable to the employer's business.

The question being that of whether the theoretical occupational value or use of these facilities by the plantation employees constitutes a part of their compensation which should be reported by the employer under Section 1392 and on which the employee is or may be liable to taxation as income under Section 1388 or 1930. I am of the opinion that these facilities so furnished for use of the employees do not constitute compensation, and are not taxable as income, and, therefore, employers cannot be required to calculate their value to the employees or return to the Assessor any value for them as part of the employee's compensation.

There is nothing in any of the Hawaiian decisions which throws any light on this question.

Construing paragraph 5 of Section 1392, it seems to me that the language "the amount paid in salaries or compensation" cannot be construed to include something which is not in any way paid to the employee as *compensation.*

A comparison of the language of the Hawaiian Income Tax Statute with provisions of the same character in the Federal Income Tax Laws will show that the Federal law is even more specific:

Section 1388 Revised Laws of Hawaii 1925 imposes income tax upon:

"the gains, profit and income received by every individual from . . every . . employment or vocation:"

and Section 1390 defines income as including (among other things):

"all other gains, profits, and income derived from any source whatever,"

The Federal Income Tax Acts of 1918, 1921 and 1924, define gross income as including:

"gains, profits and income derived from salaries, wages or compensation for personal service . . *of whatever kind in whatwever form paid,"* or " . . gains or profits and income derived from any source whatever."

Thus, if anything, the Federal Statutes are more particular in their intention to reach compensation "in whatever form paid", and would reach a rental value of quarters or the value of light, fuel; etc., if the Hawaiian statute could.

As is the custom in the Treasury Department, the Commissioner of Internal Revenue promulgates regulations intended to interpret or more particularly define and prescribe the law's requirements.

Under the Revenue Act of 1918, Article 33 of the Regulations so promulgated, reads as follows:

"Art. 33. *Compensation paid other than in cash.* Where services are paid for with something other than money, the fair market value of the thing taken in payment is the amount to be included as income. If the services were rendered at a stipulated price, in the absence of evidence to the contrary, such price will be Presumed to be the fair value of the compensation received. Compensation paid an employee of a corporation in its stock is to be treated as if the corporation cold the stock for its market value and paid the employee in cash. *When living quarters such as* camps *are furnished to employees for the* convenience *of the employer, the ratable value need not be added to the cash compensation of the employees,* but where a person receives as compensation for services rendered a salary and in addition thereto living quarters, the value to such person of the quarters furnished constitutes income subject to tax."

Thus it appears that even at that time an exception was recognized in the case of living quarters furnished to employees for the convenience of the employer. It is true that the example given is "camps", but various income tax rulings were made showing that places other than "camps" were interpreted as constituting living quarters "furnished to employees for the convenience of the employer". For example, in the 1919 Cumulative Bulletin of Income Tax Rulings, page 71, Office Decision No. 265 was rendered as follows:

"Board and lodging furnished seamen in addition to their cash compensation is held to be supplied for the convenience of the employer and the value thereof is not required to be reported in such employees' income tax returns."

In Cumulative Bulletin No. 4, for 1921, at page 85, Office Decision No. 915 was rendered as follows:

"Where the employees of a hospital are subject to immediate service on demand at any time during the twenty-four hours of the day and on that account are required to accept quarters and meals at the hospital, the value of such quarters and meals may be considered aft being furnished for the convenience of the hospital and does not represent additional compensation to the employees. On the other hand, where the employees are on duty a certain specified number of

hours each day and could, if they so desired, obtain meals and lodging elsewhere than In the hospital and yet perform the duties required of them by such hospital, the ratable value of the board and lodging furnished is considered additional compensation."

In the decision just quoted it will appear that only where employees were at liberty to obtain meals and lodging elsewhere than in the hospital, would the ratable value of the board and lodging furnished be considered additional compensation.

By Office Decision No. 914 (also in Cumulative Bulletin No. 4, 1921, at page 85), the same question was passed upon, and turned on the question of whether the right of the employee to use the quarters was made part of the compensation of the employees. This decision reads as follows:

"Whether the fair rental value of buildings occupied by employees of the Indian Service should be included in the compensation of such employees in computing their net income, depends upon the manner in which such rental value has been treated by the Department of the Interior. If the value of such quarters has been charged to the appropriation from which the compensation of such employees is paid and the amount covered into the Treasury as miscellaneous receipts, then such rental value is additional compensation to the employees and should be included together with the cash compensation received as income. If however, the Interior Department has permitted the employees in question to occupy the quarters without making the right to use such quarters a part of the compensation of such employees, in such case the fair rental value of the quarters is not income to the employees and should not be included with their cash compensation in computing their net income, it being held that such quarters are furnished for the convenience of the employer."

Office Decision No. 814, at page 84 in the same Bulletin, reads as follows:

"Where, from the location and nature of the work, it is necessary that employees engaged in fishing and canning be furnished with lodging and sustenance by the employer, the value of such lodging and sustenance may be considered as being furnished for the convenience of the employer and need not, therefore, be included in computing net income of the employees."

However, the Department at the same time held

another view as to the value of quarters, etc., furnished to officers and employees of the Public Health Service. By Office Decision No. 1098 (found in Cumulative Bulletin No. 5, 1921, page 85) it was ruled that quarters, heat and light furnished to attendants, internes, nurses, etc., under regulations entitling them thereto, were to be regarded as "furnished to such persons in respect of a service which they render and as an inducement to them to enter the Public Health Service", and therefore that their value constituted income to them and should be returned as such.

By a decision of the Income Tax Unit (No. 1965) rendered in 1924 under the Revenue Act of 1921, found in Cumulative Bulletin III-1, page 201, it was ruled that the per diem allowance furnished to enlisted men (of the Navy and Marine Corps) at certain stations and posts where housing and messing facilities are not available is considered compensation for services and should be returned as income.

In Income Tax Unit Decision No. 2051 (Cumulative Bulletin 111-2, 1924, page 55), made under the Revenue Act of 1921, it was ruled that *inasmuch* as the Department of the Interior *considered* the value of quarters furnished to employees of the Indian Bureau as *additional compensation to such employees*, regardless of the fact that the rental value of such quarters had not been charged to the appropriation from which the salaries of such employees was paid, the rental value of such quarters should be returned by the employees in their income tax returns as additional compensation.

However, after all these regulations, interpretations and rulings by the Treasury Department, a test case was initiated before the Court of Claims under the Revenue Act of 1921, and by a decision rendered on April 13, 1925, in the case of *Clifford Jones (Ma-*

jor, U. S. Army) vs. *the United States,* it was held by the Court of Claims that the fair rental value of quarters furnished by the Government to an officer of the United States Army, or cash paid in lieu of or for quarters where quarters are not furnished (commutation of quarters), do *not* constitute taxable income. The full decision appears in Internal Revenue Bulletin of July 6, 1925, Vol. IV., No. 27, pages 13 to 20. The following excerpts are quoted to indicate the reasoning for the conclusion reached:

"Section 213 of the Revenue Act of 1921 (42 Stat., 237) enumerates with precision the various modes of accumulation which constitute under the statute gross income. So far as pertinent to the present discussion it may be abbreviatively reproduced as follows:

'That for the purposes of this title * * * the term "gross income" (a) includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such) of whatever kind and in whatever form paid * * *."

* * *

"Therefore, it seems quite clear that the purpose and intent of Congress in inserting the parenthetical clause in the Act of 1918 and continuing the exact language in subsequent legislation was to tax the compensation received try the President and Federal judges in their official capacity. In other words, to subject them to an imposit ion of the tax as such officers, whereas they had theretofore been excluded. As to the officers and employees of the United States, its island possessions, and the District of Columbia, the reason for specific reference to them is not so clear. Just why they were joined in the clause is not apparent. In any event, *their inclusion does not change. the inference that what Congress intended and designedly exrpressed was to reach the compensation received* by all such officers. So that so far as the construction of the taxing statute is involved, *the real issue as to* this *aspect of the case is whether the allowance known as commutation of quarters or assignment and occupancy of quarters* granted an Army officer *is compensation.*

"The first income tax Act passed in 1861 (12 Stat., 472), by express terms provided that 'there shall he levied, collected, and paid on all salaries of officers, or payments to persons in the civil, military, naval, or other employment or service of the United States', thereby expressly imposing a tax, not only upon the salaries of officers, but

likewise upon *'payments'* to persons in the civil or military service of the Government, thus expressly recognizing the long-established distinction between compensation and allowances, and this language was repeated by Congress in the income tax law of 1894 (28 Stat., 509). As a matter of fact, legislation of this character is so pointedly illustrative of a recognized and long-established difference between compensation and allowances provided for under certain prescribed conditions that multiplication of citations would serve no useful purpose.

Mr. Justice Brown, in *United States v. Smith (158* U. S. 346), clearly distinguished between allowance which form a part of compensation and those which serve to reimburse for expenditures made. In *Sherburne's case* (16 C. Cls., 491), this court, quoting from Scott's Military Dictionary, said:

'Pay is a fixed and direct amount given by law to persons in the military service in consideration of and as compensation for their personal services. Allowances, as they are called, or emoluments, as they were formerly termed, are indirect or contingent remuneration which may or may not be earned, and which is sometimes in the nature of compensation and sometimes in the nature of reimbursement.'

In *United States v. Mills* (197 U. S., 223-227) the Supreme Court had before It the question of computation of longevity pay due an officer of the Army. In the course of the discussion this language was used: "The words "pay proper," we see no reason to think, are to be construed differently from the word "pay." The term means compensation, which may properly be described or designated as "pay," as distinguished from allowances, commutation for rations, or other methods of compensation not specifically described as pay.' In our view of the case, what was said in the Mills case is a clear exposition of the fundamental distinction between 'pay' and 'allowances.' Therein it is pointed out with clearness the line of demarcation between *pay proper, allowances.* and *other* methods *of compensation,* the court emphasizing by specification and generalization what Congress intended by use of descriptive terms in characterizing 'pay proper.' "

* * *

"The compensation of Federal judges is their fixed annual salary. Generally, and almost without exception, including the Army and Navy, the Federal statutes fix a certain specified pay for each employee or officer of the Government, known as his compensation. This is a fixed and definite sum annually appropriated for and to which the occupant of the office la by law fully entitled as long as be remains in office, and entitled to whether sick or well, unless separated from the office, and *it is this sum,* this annual salary, *to which Congress and all others refer* when they speak of the officer's *compensation,* and manifestly, *unless there is some qualification* of the term, some legislative expression that Congress intended to reach out and tax what has continuously and notoriously been regarded as an *allowance,* distinct from compensation, *the just inference is an intent to limit the gross income of the officers* mentioned to their pay proper, *their fixed compensation.* We have said that we do not believe the allowance of quarters or commutation thereof to an officer of the Army is income."

After reviewing various phases of the conditions which attach to Army service, the decision proceeds:

"All these and many more considerations, of which we confess an unfamiliarity, make it imperative upon the part of the Government to provide housing facilities for troops and officers of the Army, if an army is to be maintained at all. Therefore, it seems to us that military quarters for both the enlisted men and officers of the Army are no more than an integral part of the organization itself. They are, so to speak, units of the military plant, the indispensable facilities for keeping the Army intact and maintaining it as such, as much so as the crude shelter provided for a watchman at a railroad station, or the lonely habitation of a lighthouse keeper. The officer is not paid a salary and furnished a house to live in for his services; he is, on the contrary, paid a salary to live in the quarters furnished.

But we are told that if the Government did not furnish the officer quarters he would have to incur the expense of procuring the same. *Such an argument is absolutely devoid of merit.* The inherent organization of the Military Establishment of the United States refutes it. Imagine a military post uninhabited by officers. Speculation as to possibilities and conditions in the face of long recognized and the firmly established status and organization of the Army are indeed idle."

* * *

"In common parlance, compensation, when used in connection with salaried officials, is the equivalent of money paid for services performed and received as such. While, of course, it may have a broader legal significance, it is not the rule of statutory construction to give the word more than its ordinary meaning unless from the four corners of the statute such was the legislative intent. In the case of *Gould v. Gould* (245 U. S. 151) the Supreme Court said:

'In the interpretation of statutes levying taxes it is the established rule not to extend their provisions by implication beyond the clear import of the language used or to enlarge their operation as to embrace matters not specifically pointed out. In case of doubt, they are construed most strongly against the Government and in favor of the citizen.' See also *United States v. Merriam* (263 U. S., 179).

"Lastly, may such allowances be considered as income? In *Eisner v. Macomber* (252 U. S., 189) we find this expression: 'Income may be defined as the gain derived from capital, from labor, or from both combined.' The defendant criticises the citation of the above case on the grounds of utter dissimilarity as to issue. There can be no doubt that as to issues involved the citation is inapposite. Nevertheless, the generalization of the definition is possible. In this case involving personal service it is comprehensive. The essential factor in the determination of the question lies not alone in the single element of gain, but gain *derived* from labor. In other words, as remuneration for the officer's services is he not only paid a salary but in addition furnished a house to live in as part thereof? If, so, income accrues; if not, no income accrues. The most conspicuous illustration of the

differentiation is the Chief Executive of the Nation. Our Presidents occupy the White House. If in computing income tax the fair rental value of this most historic and pretentious house and grounds is to be the standard, the annual compensation of the President would indeed be substantially reduced. In the scheme of Government, just as in the Army, the White House becomes the Executive office of the Nation. It is an inseparable incident of the office itself, the one provision made by Congress wherein the Executive'e duties are to be discharged. An English case decided by the House Of Lords in 1892 *(Tenant v. Smith*, H. L. 1892 Appeal Cases, 150) points out with distinct clearness the vital difference between income and that which is not income, though apparently an advantage. Lord Watson said:

'It appears to me that the case was decided in the court below, as it has been argued at your Lordship's bar, upon the true legal issue—namely, whether the appellant's residence is income within the meaning of the statutes which must be valued and assessed for income taxes. * * * The appellant does no doubt reside in the building, but he does so as the servant of the bank and for the purpose of performing the duty which he owes his employers. His position does not differ in any respect from that of a caretaker or other servant, the nature of whose employment requires that he shall live in his master's dwelling house or business premises instead of occupying a separate residence of his own * * *. In the present case the learned judges of the majority have assessed the value of the appellant's residence at £50 upon somewhat speculative footing that if his duty did not require him to reside in the bank he would be compelled to pay that sum for suitable accommodations for himself and family elsewhere. In that view the so-called benefit may in some instances prove a heavy burden, as in the case of a bank agent who, but for the service required by his employers, could continue to reside, free of charge, in his parent's house.'

Again, Judge Clayton, in *Smith v. Jackson* (241 Fed., 747), said:

'I think it may be said, therefore, that an emolument is something positively and directly conferred, as compensation or gain, that the holder of an office receives, and not something necessarily insep arably and incidentally used by him in the discharge of his duty, a duty for which he is paid a fixed salary.

"We have heretofore cited a number of State cases. The line of demarcation runs parallel with the services one engages to perform. If the nature of the services require the furnishing of a house for their proper performance, and without it the service may not properly be rendered, the house so furnished is part of the maintenance of the general enterprise, an overhead expense, so to speak, and forms no part of the individual income of the laborer. The master of a vessel and captain of a steamboat are furnished living quarters while on a voyage. A countless number of employees engaged in a great variety of special and important employment are required to be continuously present on the job. They must not only have a place in which to live but adequate facilities for doing what they are called upon to do. Is the maintenance of this overhead expense to be first

charged to the Government and then in part recouped from the officer's salary by way of taxation?

* * *

"The advantage which accrues, the gain which obtains, if any such obtains, is to be ascertained by comparison only, and the comparison resorted to is one involving the mode of living in civil life with that which obtains in the Army. Aside from the pronounced dissimilarity of the two, the argument predicted thereon affords no solution of the problem, for the conclusion drawn results only in a *saving,* which of itself is not income. It is said that if the officer was not permitted to occupy public quarters he would be compelled to hire them and pay the expense from his salary. The Department of Jus tice in Washington occupies and conducts the major portion of its affairs from a commodious and modern office building, rented from the owner and the rent paid by the Government. If the learned assistant attorney should resign his public office and resume private practice, he would manifestly be required to rent an office and pay from his own income the expense thereof. Does this fact indubitably characterize the privilege of occupancy of an office in the department, rent, free, as income? We think not, for both he and an officer of the Army must remain in the quarters assigned them as an inseparable part of their prescribed duties, just as much so as is the conducting of a trial or the giving of military instructions or the training of troops. The public quarters of the officer is his office as well as his temporary home. *It is not, as well said in the case of Tennant v. Smith, supra, what is paid out but what comes in that constitutes income.* It is indeed far from impressive that where an employer, in the course of the promotion and efficiency of the enterprise in which be is engaged, must of necessity provide the indispensable facilities for the successful prosecution of the same, because perchance an employee in the not to be avoided course of his duties may be in a position to avoid an expense which in a different character of service he might be obliged to incur, that therefore the use of the facility Constitutes income."

Thereafter find the following further decisions of the Income Tax Unit:

By Income Tax Unit Decision No. 2219 under the Revenue Acts of 1918, 1921 and 1924 (Bulletin IV., 1925, No. 44, p. 1), it was ruled:

"Money allowances in lieu of subsistence and quarters made by the United States Government to enlisted men and non-commissioned officers in the United States Army are not income subject to Federal income tax, "

modifying the above mentioned Income Tax Decision No. 1965.

Again, by Income Tax Unit Decision No. 2232

under the Revenue Act of 1921 (Bulletin IV., 1925, No. 46, p. 6), it was ruled:

"The decision of the Court of Claims in the case of *Clifford L. Jones vs. United States* (Bulletin IV-29, 13) relative to commutation of quarters and the rental value of quarters occupied by officers of the Army, is equally applicable in the case of members of the Coast Guard, coast and Geodetic Survey, and the Public Health Service,"

Office Decision No. 1098 (above quoted) being overruled.

Reference should be made to the provisions of the contract under which various employees are engaged. In one form or another it is agreed that the plantation will furnish a laborer with lodgings sufficient for himself and family, and fuel and water for domestic use, and medicines and medical services, hospital accommodation if necessary, etc., there being a condition that the employee conforms to the rules and regulations of the plantation for the time being, etc. But there is nothing which would support these as having any assumed value as compensation. They are furnished, that is all. Some may or may not result in "value" to the employee-as, for example, medicine, medical service or hospital accommodations. He is entitled to them whether he has occasion to "enjoy" their benefits or not. All of these things doubtless are inducements to the laborer in taking or remaining on the job, but no more so than such things furnished for a lighthouse keeper on a lonely reef or rock, or employees at a cable station, etc. They all relieve the employee of the expense he might have for such necessaries if he were on a job where they were not furnished. But their *value* has not enterd into the make-up of his compensation as an employee. Hence I think the agreement to furnish these "perquisites" does not alter the legal principles above discussed as to what constitutes compensation or taxable income.

If the foregoing reasoning is sound—resulting in the opinion (herein expressed) that the value of quarters and other like "perquisites" furnished plantation laborers is not a part of the taxable income of such employees—it necessarily follows that the value of subsistence and quarters furnished hospital nurses, in many cases, and of quarters furnished school teachers in rural districts, should not be considered a part of the taxable income of such employees.

Quarters and partial subsistence is commonly furnished certain classes of hospital nurses, and my observation is that this is done not, primarily, as a part of the *compensation* allowed, but for the benefit of the hospital organization and for the advantage of a bettax service. Likewise, where quarters are furnished school teachers in remote rural districts, as an inducement to them to teach in these remote places rather than in the larger centers, it would seem that such quarters are allowed primarily to insure teachers and teaching facilities for such rural districts, as an advantage to the school system and only incidentally (if at all) as partial compensation.

I beg to advise you, therefore, that, in my opinion, the value of living quarters, heat, light, etc., furnished to plantation laborers; of the "subsistence and quarters" often furnished to nurses in hospitals; and of quarters furnished teachers in rural districts as an incentive intended to secure their services—should not be considered as income subject to taxation under the income tax statutes; and accordingly that a return of such items (under Form B-21, -12-25) is not required by law, of employers in such cases.

Very truly yours,

WILLIAM B. LYMER,

Attorney General.