

March 9, 1928.

OPINION No. 1467.

TAXATION; PERSONAL PROPERTY:

Mainland stocks and bonds owned by local enterprise for profit taxable under last ruling of Supreme Court.

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

Sir:

Your request for an interpretation of the latter portion of paragraph 6 of Section 1320, R. L. 1925, has been turned over to me by the Attorney General for disposition.

As I understand it your question resolves itself into whether or not stocks and bonds of private mainland corporations owned by local corporations assessed as an enterprise for profit are deductible as non-taxable property in estimating the tax value of the local enterprise for profit.

In *Assessor v. C. Brewer & Co.*, 15 Haw. 29, Justice Perry, now Chief Justice, rendered an opinion, concurred in by then Chief Justice Frear, to the effect that no personal property is taxable, either in the hands of individuals or any corporate entity, unless it is enumerated in what is now Section 1319, R. L. 1925, and that stocks and bonds not being so mentioned, are hence not taxable.

Justice Galbraith wrote a dissenting opinion in which he disagreed with the foregoing proposition laid down by the majority opinion, and went further and held that mainland stocks and bonds were included in what is now Section 1319 by the word "chattels".

The majority opinion has been controlling in this

jurisdiction from that time, namely, 1901, down to the *American Factors* case, decided in 1921, 25 Haw. 769. In this latter case, in an opinion written by then Chief Justice Coke, and concurred in by Justices Kemp and Eddings, it was held that mainland stocks and bonds are taxable unless issued by a company incorporated under the laws of the Territory of Hawaii, or by a foreign corporation carrying on business in the Territory.

Regardless of what we may think of this latter decision, it nevertheless stands as the last pronouncement of our local Supreme Court as to the law on the point in question, and so standing, we must consider ourselves bound by it so long as it stands unreversed.

In 1923, in the matter of the *Tax Appeal of Hawi Mill and Plantation Company, Limited*, 27 Haw. 604, some mention is made as to the taxability of mainland stocks and bonds owned by a local corporation, the court holding in that case that such stocks and bonds were taxable. The case is of no value for the purposes of this opinion, however, for the reason that the taxpayer in the Hawi case voluntarily returned the mainland stock as taxable, the court, for all that appears, merely acquiescing in taxpayer's view of the matter.

In view of the *American Factors* case above cited, this department feels constrained to advise you that so long as the opinion therein rendered stands unreversed, mainland stocks and bonds are not deductible as non-taxable property in estimating the tax value of a local enterprise for profit.

Respectfully,

H. R. HEWITT,
First Deputy Attorney General.

APPROVED:

WILLIAM B. LYMER,
Attorney General.