

October 1, 1928.

OPINION NO. 1505

TAXATION — INCOME—COMPUTATION OF DEPRECIATION—ALLOWANCE:

Section 1391, Revised Laws of Hawaii, 1925, limits such allowance to amounts actually shown by and written off books of taxpayer.

Honorable Henry C. Hapai,
Treasurer of Hawaii,
Honolulu, T. H.

Sir:

Under date of August 30, 1928, you requested the opinion of this department as to the following:

Does the provision of Section 1391, Revised Laws of Hawaii, 1925, viz.: "Provided, however, that in no case shall such depreciation exceed the amount actually shown by and as written off the books," justify the Income Tax Bureau in disallowing depreciation claimed by the taxpayer in excess of the amount shown by and written off in its books.

As stated in the letter attached to your communication, it appears that a corporation keeps its books of account on the cash basis and claims a deduction on its Territorial Income Tax Return in respect to depreciation of fixed assets, the amount thereof not, however, appearing as having been written off from its said books. This statement constitutes the only set of facts upon which the opinion requested is to be predicated. It does not appear as to whether the corporation keeps as a matter of bookkeeping entry, any record of its assets, nor does it appear what records, if any, are kept by the corporation in respect to its assets.

In view of the brief facts submitted, any opinion that might be rendered by this department would have to be confined solely to an interpretation of the statute itself and not a conclusion drawn by applying the law and an interpretation thereof to a set of facts.

The Proviso in question was enacted by the Legislature of 1917, as a part of an amendment providing for depreciation allowance in the computation of corporation income. As stated by the Senate Judiciary Committee in its report on the bill providing for the same (Senate Journal, 1917, p. 558) the purpose thereof was to allow, "any person or corporation in computing income for taxation purposes, to deduct a reasonable allowance for the exhaustion, wear and tear of property used in the business or trade, or more commonly known as depreciation. Under the present system in Hawaii depreciation is not allowed, though it is a well recognized cost of any business. In Hawaii replacements are allowed instead of depreciation. This system is faulty as it means that in any one year a large amount may be deducted rather than that the amount be spread out over a number of years, as in the case of depreciation."

The report of the committee appears to be unequivocally adopted by the Legislature. The Act clearly states that "in no case shall such depreciation exceed the amount actually shown by and as actually written off the books." This language unreservedly confines the deduction known as "depreciation" to such depreciation as appears to be of record on the books of the taxpayer. This proviso undoubtedly was intended to prevent the evil of a large allowance in any one year, as pointed out in the quoted excerpt from the committee report.

You are therefore advised that the statute in question should be interpreted literally and applied without discretion by the income tax assessor. The burden, of course, in showing the propriety of such allowance is upon the taxpayer, it not being mandatory upon the tax

assessor to accept without question the depreciation actually shown and written off the books of the taxpayer.

Respectfully,

H. T. KAY,
First Deputy Attorney General.

APPROVED:

H. R. HEWITT,
Attorney General.