

October 8, 1928.

OPINION NO. 1508

TAXATION—INCOME—LOSSES:

Deductible Losses—under Section 1391, R. L. H. 1925, confined to actual losses sustained in taxation period.  
Determination of Loss—dependent upon facts reflecting actual loss.

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

Sir:

Under date of July 18, 1928, you requested the opinion of this Department relative to the propriety of certain income tax deductions claimed by Theo. H. Davies and Company, Limited, under Section 1391, Revised Laws of Hawaii, 1925. These deductions as claimed arise out of losses sustained through the failure of the Pearl City Fruit Company, Limited, a majority of the stock of which company is held by the taxpayer, and are set out in detail by Henry Glass, Income Tax Assessor, in a letter to you under date of July 17, 1928, a copy of which was enclosed in your communication to this office.

The propriety of such deductions as claimed by the taxpayer is discussed in the cases of Tax Assessment, *H. Hackfeld & Co.*, 16 Haw. 559, and *Ewa Plantation Co. vs. Wilder*, 26 Haw. 299, affirmed 289 Fed. 664. The Supreme Court in each case interpreted Section 1391, Revised Laws of Hawaii, 1925, as subject to liberal construction, but held that losses claimed as deductions must be confined to those losses “actually sustained during the taxation period.” The loss must not be an estimate, but must be a loss in fact, regardless of what may be shown by the books of the company. The Su-

preme Court in *O. R. & L. Company, Ltd. vs. Wilder*, 27 Haw. 333, approved the application of such a standard, and limited tax deductions to the taxation period.

Questions 1 and 2 presented by Mr. Glass’s letter are therefore answered in the negative.

Question 3 raises a question of fact, and you are advised that actual disincorporation by reason of insolvency would constitute a factor in determining whether there had been a loss. Proceedings prior to such disincorporation are to be considered in the light of their bearing upon the loss claimed, and can only be given weight as they reflect an actual loss.

Very truly yours,

H. T. KAY,  
First Deputy Attorney General.

APPROVED:

H. R. HEWITT,  
Attorney General.