
October 9, 1920.

OPINION NO. 947.

TAXATION: RECOVERY OF TAX
PAID UNDER AN ILLEGAL AS-
SESSMENT:

A taxpayer cannot maintain an action for the recovery of an amount of tax paid under an illegal assessment except upon a compliance with Section 1392 of the Revised Laws of Hawaii, 1915, nor may the amount of such tax be refunded to him by the Treasurer or Tax Assessor.

Honorable Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, T. H.

Dear Sir: I beg to acknowledge the receipt of your communication of the 6th instant, requesting my opinion as to whether Mr. Castendyk's claim for a refund of income tax should be recognized.

It appears from the record submitted that Mr. Castendyk, upon the advice of Deputy Tax Assessor Supe, included in his income tax return for the present year the sum of \$2250.00, which he had received as a

gift during the year 1919. Mr. Castendyk now demands a refund to him of the amount of the tax paid on this gift and refers to the recently decided case of Mrs. Frear vs. Wilder as authority for his claim.

The facts in the Castendyk case are identical with those in the case referred to and he would have been entitled to recover the amount of the tax if he had taken the proper steps to protect himself.

Section 1392 of the Revised Laws of Hawaii, 1915, provides one method by which a taxpayer may put himself in a position to recover back the amount paid under such an illegal assessment. It is there provided that a written protest must be filed with the public accountant (in this case the tax assessor) and action must be commenced for the recovery of the amount within thirty days of the date of payment. In the absence of protest and the institution of such action within the said thirty days the assessor is required to deposit the moneys in the treasury of the Territory as a governmental realization. The other method by which the taxpayer may protect himself is by perfecting his appeal to the tax appeal court, where the assessment of the disputed item may be reviewed.

In so far as I am informed, Mr. Castendyk has followed neither of these courses and under the law and the statute above referred to is not entitled to recover this amount and neither the tax assessor nor the Treasurer may legally refund the same to him.

"In accordance with the general rule governing voluntary payment, the person who voluntarily pays an illegal tax even though he pays under considerable actual pressure, cannot maintain an action to recover it back." 26 R. C. L. 455.

You are advised, therefore, that the amount of this

tax may not be refunded to the claimant. I return herewith the papers submitted. I am,

Yours very truly,

HARRY IRWIN,
Attorney General.

Note: See letter to the Treasurer dated Nov. 24, 1920. No. 11395.
