

September 17, 1937.

OPINION NO. 1657

TAXATION, PERSONAL PROPERTY;
TAX LIEN.A lien for personal property taxes
exists in favor of the Territory by statute.Mr. Cambell Crozier
Deputy Tax Commissioner
Honolulu, T. H.

Dear Sir:

The contention has been made in behalf of the transferee of the property of Shigeru Imaizumi that no lien exists for personal property taxes. In this connection I will consider both the former law and also the present personal property tax.

Under the former law, as amended by Chapter 146, Section I, L. 1911, it was the opinion of the Attorney General that a lien existed on personal property. (See Op. Att'y Gen. [1920] No. 954.) The ground of that opinion was that the statute provided that every tax due upon property should be "a prior lien upon property assessed" (section 1372, R. L. 1925), making no distinction between real and personal property, both of which were covered in the chapter. This provision, and the latter part of the section providing for the foreclosure of such liens in equity, were compared by the writer of that opinion with the next following section providing for foreclosure without suit of liens on *real property*, and the writer of that opinion concluded that in this latter section the legislature had differentiated between the lien on real property and the lien on personal property, showing that both types of lien existed.

The early system of legislating with respect to real

and personal property taxes in one chapter and treating both as “property taxes” and providing a lien for both, throws some light on the present statute. When Act 9, Sp. S. L. 1933 was enacted the former system of dealing with real and personal property taxes in the same way was restored to the extent provided in section 13 of Act 9 which incorporated all provisions of the real property tax law not inapplicable and not inconsistent with the provisions of Act 9, including without prejudice to the generality of the foregoing, provisions relating to the collection of taxes, delinquent and other penalties, the rights, powers and duties of the commissioner and tax collectors, the rights, duties and liabilities of taxpayers and numerous other matters.

The imposition of the lien on the property assessed is a provision relating to the payment and collection of taxes and penalties, and also, is a provision relative to the powers and duties of the commissioner and tax collectors. The provision for a lien appears under the heading “collection of taxes”, in the original act imposing the lien on real property, Act 40 of the 2nd Sp. S. L. 1932. This heading, “Collection of Taxes”, preceded section 57, whereas the lien was provided in section 65, but it appears from the act that this heading, “collection of taxes”, applied to all of the subject matter right down to section 71. In R. L. 1935, the heading “enforcement of payment” is placed before the provision for a lien. As a method of collecting taxes or enforcing payment the provision for a lien is incorporated in the personal property tax law by section 13 of Act 9. This appears clearer by considering section 2106, R. L. 1935 as amended by Act 153, L. 1935. It is therein provided that a bailee, and certain other parties paying the tax on personal property which they do not own personally, “shall have a lien on the same, which lien, upon notice thereof containing a description of the property upon which such lien is claimed, being filed * * * shall be

paramount to all other liens, *except liens for taxes in favor of the government*, and maybe foreclosed by suit in equity or without suit in the manner provided by section 1961, as nearly as may be”. The underscored part shows clearly that the legislature considered it to be true that the government had a lien for taxes on personal property. This legislative interpretation properly may be considered. *First National Bank v. Mo.*, 263 U. S. 640, 68 L. Ed. 486; *Spencer v. U. S.*, 169 Fed. 562; *Sarlls v. U. S.*, 152 U. S. 570, 38 L. Ed. 556; *Hardy v. Ruggles*, 1 Haw. 255-259; *People v. Cricuoli*, 141 N. Y. S. 855; *In re Hurle*, 104 N.E. (Mass.) 337.

The last two cases above cited show that it is proper to take into consideration interpretation by the legislature contained in amendments passed after the date of the transaction involved, although such amendments of course are not binding.

Upon consideration of the foregoing I am of the opinion that a lien for personal property taxes exists upon personal property assessed both in 1932 and prior thereto, and also in 1934 and the tax years thereafter.

Very truly yours,

RHODA V. LEWIS,
Deputy Attorney General.
