

April 10, 1942

OPINION NO. 1813

TAXATION, REAL PROPERTY TAX;

EXEMPTIONS:

The status of real property is determined as of January 1 of the assessment year and land privately owned on that date and not under lease does not become exempt for the current year by reason of the later execution of a lease with the United States containing a tax exemption clause; Act 143 (Ser. A-58) L. 1941 construed.

SAME, SAME; SAME:

The purpose of the requirement that certain tax exemptions be claimed on or before January 31 of the assessment year is merely to aid the assessor by providing for the early presentation of exemption claims, and whether or not such claim is required the rule is that the status of the property is to be determined according to the facts as they stood on January 1.

SAME, SAME; SAME:

Where an exemption is not required to be claimed ex-

empted property has been assessed a correction may be made prior to the date of filing of the assessment list; as to whether a change in the assessment list on this ground might be made thereafter no opinion is expressed.

Honorable William Borthwick
Tax Commissioner
Territory of Hawaii
Honolulu, T. H.

Dear Sir:

You have referred to this office a letter from the District Legal Officer, Fourteenth Naval District, relating to the interpretation of Act 143 (Ser. A-58) L. 1941. This act amended paragraph 2 or Section 1976, R.L. 1935 so as to cause the same to read:

"Sec. 1976. Public property, etc. The following real property shall be exempt from taxation:

* * * *

"2. Real property under lease to the United States, the Territory, or any county, under which lease the lessee is required to pay the taxes upon such property; * *"

Prior to the 1941 amendment paragraph 2 read:

"Real property under lease to the Territory or any county under which lease the lessee is required to pay the taxes upon such property; * *"

You request our opinion as to whether or not we concur in the interpretation placed by the District Legal Officer on said Act 143 (Ser. A-58) L. 1941, namely, that

real property becomes exempt at any time during the year that a lease containing the assumption of taxes clause may be executed. We regret that we are unable to concur in this conclusion. In our opinion, in order to be exempt the land must be under lease to the United States of January 1 of the assessment year, that is to say, in order for land to be exempt:

(1) The lease must have been executed prior to January 1 of the assessment year;

(2) The lease must have contained an assumption of taxes clause; and

(3) The term of the lease must have commenced on or before January 1 of the assessment year, and must have continued in effect on January 1.

Reference is made by the District Legal Officer to the fact that no claim for an exemption of this character is required by the statute to be filed by the owner, as contrasted with certain exemptions which must be claimed on or before January 31. Our conclusion as to this feature of the matter is that the status of the property is to be determined according to the facts as they stood on January 1; the effect of there being no requirement that a claim be filed is merely that the tax assessor has authority to correct an assessment prior to the date of filing of the

assessment list if the property actually was exempt on January 1 but has been assessed for taxes, that is to say, the exemption is not lost by failure to call it to the assessor's attention at an earlier date. Reasons for the foregoing conclusions will now be presented.

Section 1934, R.L. 1935 provides that: "Taxes shall be levied upon real property each year as of January 1 of such year upon the basis of valuations determined in the manner and at the time provided in this chapter." This means that the obligation of the taxpayer attaches on January 1 and is not affected by subsequent changes in the facts, although the amount of the obligation remains to be determined. Jones v. Norris, 8 Haw. 71; Cooper v. Island Realty Co., 16 Haw. 92. The status of the taxpayer is fixed as of January 1, whatever may be the subsequent date when the assessor actually makes the assessment. Oleson v. Borthwick, 33 Haw. 766.

Pursuant to the foregoing rule that the status of land for taxation purposes is fixed in accordance with the facts as they stood on January 1 it already has been ruled by this department that land does not acquire an exempt status by being transferred in April to a representative of a foreign government entitled to an exemption by treaty provisions; in such a situation the whole year's

taxes must be paid. Conversely, property exempt as of January 1 remains exempt although transferred in April to a private owner in whose hands it would not be exempt. Ops. Atty. Gen. (1913) No. 269; as to nature of exemption there involved see Ops. Atty. Gen. (1907-8) No. 53. See also Ops. Atty. Gen. (1929-33) No. 1553. This rule previously has been applied by this office in interpreting the very provision here involved, insofar as land leased to the Territory is concerned; in our opinion letter of July 20, 1937 we advised you that a lease made in 1937 by the University would not affect 1937 taxes. Prior to the enactment of the specific provision for remission of taxes in certain cases, now contained in motion 1979, R.L. 1935, this office ruled that property privately owned on January 1 is subject to a whole year's taxes, there being no authority to remit any part of the taxes because of purchase of the land by the Territory during the year. Ops. Atty. Gen. (1922-4) No. 1025.

The departmental view that tax exemptions are fixed as of January 1 was sustained in Bank of Hawaii v. Muir, 30 Haw. 334. It was held that where government land is leased, thereby becoming subject to taxation, it is subject to an entire year's taxes in the last year of the lease, even though the lease will terminate in April and the property then revert to the government. The court pointed

out that there was no injustice in this rule since in the first year of the lease nearly nine months' tax exemption was enjoyed by the taxpayer because of the exempt status of the land as of January 1 of the year in which the lease commenced. Conversely here, the owner of the land will enjoy no tax exemption in the year in which the lease is made but will enjoy an entire year's tax exemption in the year in which the lease terminates.

The legislature repeatedly has recognized the above rule that tax exemptions are determined as of January 1. In enacting new tax exemption statutes it frequently has made them effective as of January 1, thereby recognizing that the current year's taxes otherwise would not be affected by the amendment. See for example Act 249 (Ser. A-40) L. 1939. In 1931, Act 203 of that year, the legislature enacted the provision now continued in amended form in Section 1979, R.L. 1933, providing for the remission of taxes from and after the date of acquisition of land by the Territory or county. Section 1325, R.L. 1925 provided at that time, as Section 1976, paragraph 1, R.L. 1935, now provides, that real property belonging to the Territory, counties or city and county was exempt; in enacting the remission provision the legislature recognized that this exemption applies as of January 1 and that a specific

provision is necessary for a change of status during the year to have any effect on the current year's taxes. Similarly, "real property belonging to the United States" is recognized as exempt by Section 1976, paragraph 1, R.L. 1935; yet the legislature at the same session which enacted the statute now under discussion, amended Section 1979, R.L. 1935, so as to provide for remission of taxes from and after the date of acquisition of land by the United States in eminent domain proceeding. Act 126 (Ser. A-62) L. 1941. By providing for remission of taxes only in this particular instance the legislature clearly showed that it did not intend a remission of taxes in the case of real property leased by the United States during the year.

The view followed in this opinion is the generally prevailing view. As stated in 2 Cooley on Taxation, 4th Ed., Sec. 712, p. 1499:

"If property is not exempt on the tax day, it is liable to taxation for the fiscal year although it afterwards becomes exempt."

The requirement imposed by Sections 1971 and 1973, R.L. 1935, and by paragraphs 5 and 6 of Section 1976, R.L. 1935, as amended, that certain tax exemptions be claimed on or before January 31 of the assessment year is merely a matter of aiding the assessor by providing a procedure for the early presentation of exemption claims. Otherwise, after the

assessment notices were sent out on April 1, pursuant to Section 1933, R.L. 1935, there would be large number or adjustments to be made on account of exemption claims, and the time allowed for the preparation of the assessment list (on or before April 30, pursuant to Section 1931, R.L. 1935) might be insufficient. That the the legislature did not require filing of claims to exemption on account of land being under lease to the Territory or the counties was probably due to the fact that such leases are all readily available to the tax assessor, and the legislature in amending this provision to include the United States evidently did not contemplate the need of any special procedure in this case. If land actually exempt on January 1, by reason of a lease made prior to that date containing an assumption or taxes clause and for a term in effect on January 1, should nevertheless be assessed for taxation, the owner would have ample notice under Section 1933, R.L. 1935, and could call the matter to the assessor's attention. Prior to the date of filing of the assessment list the assessor could make the necessary correction.

After the filing of the assessment list changes may be made in the assessment list only for causes specified by the legislature. Section 1931, R.L. 1935. The questions of whether or not an exemption actually perfected on January 1 but not called to the assessor's attention in time for him to make a correction before the date of filing of the assessment list may still be had is not now involved and no opin-

ion is expressed on that point.

In conclusion, it should be pointed out that any such remission of taxes would result in a loss of revenue to the county; there is no authority to increase the tax rate so as to make up the taxes elsewhere. The legislature has provided in Section 1921, R.L. 1935, as amended, for the raising of a specified amount of money for each county and the county budget is founded thereon. Only the most explicit statement by the legislature could authorize a remission of taxes on account of a change in status of the property during the year.

Respectfully,

Rhoda V. Lewis
Deputy Attorney General

APPROVED:

Attorney General: