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OP 55-123

December 23, 1955

Honorable Earl W. Fase
Tax Commissioner
Territory of Hawaii
Honolulu, Hawaii

Dear Sir:

This is in reply to your question whether a church is entitled to exemption under section 5151 under the following circumstances:

The church and the fee simple owner entered into a recorded lease which stated that it was for the term of one year and thereafter subject to termination by either party upon the service of not less than thirty days' prior written notice to the other party. The rent was \$1 per year, plus the payment of all property taxes.

Section 5151(d) provides:

"For the purposes of this section, property with the conditions necessary for such exemption but not owned by the user thereof shall not be entitled to such exemption unless an appropriate lease for a period of one year or more covering the use thereof is in force and recorded in the bureau of conveyances; provided, however, that the requirements of this paragraph shall not apply during the taxable year 1949."

The stipulated one year elapsed prior to January 1 of the tax year in question. However, on January 1 the church is still in possession.

In a case of extension of the original term of a lease, this is not deemed to be the creation of a new tenancy. See Shannon v. Jackson, 160 N.E. 245, and compare Klickstein v. Neipris, 185 N.E. 920; Ackerman v. Loforese, 151 Atl. 159; Womble v. Walker, 181 S.W.2d 5.

However, the above are cases of extension for another definite term. Where a lease is for fixed term and thereafter the tenant holds over indefinitely from year to year this is deemed to be a new renting. Smith v. Pritchett, 178 Atl. 113.

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-2-

December 23, 1955

I do not have before me the full provisions of the lease here involved but in view of the nominal annual rent I construe it as providing for holding over a year at a time subject to termination on thirty days' notice during any year after the first year.

Since the original term was one year, it really was a year to year tenancy from its inception. I am of the view that under these circumstances the holding over does not involve a new tenancy.

By reason of the thirty day notice provision it may well be that the lease, while still in force on January 1 of the tax year, will not continue in effect throughout that year. However that is not decisive. Bank of Hawaii v. Mui, 30 Haw. 334; Op. 1813, April 10, 1942. That the lease when made was for a term of at least one year and that it continues in effect on January 1 are the decisive points.

Accordingly you are advised that the church may qualify for exemption.

Very truly yours,

RHODA V. LEWIS
Deputy Attorney General

CV 55-123