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68:45,OLC
Op 57-4

January 8, 1957

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

Dear Sir:

In further reference to my letter of October 9, 1956, this is to advise you that in my opinion the crop damages, other than the amount paid for cane stools, are taxable under chapter 101 even though a fee simple ownership is involved.

Under the practice followed entry is made by the highway department pursuant to a right of entry permit, and crop damages are paid at that time. Subsequently the land is purchased by voluntary agreement or is condemned, the latter course being followed if necessary to establish a clear title in the government or in the event of disagreement as to the land value.

These constitute two separate transactions and the crop damages cannot be treated as payment for real property.

While the cane stools are the subject of a separate payment, I do not think you should establish a different rule on that account; the amount paid for the cane stools is the same whether paid at one time or another. However, the amount paid for the cane is so computed as to leave no doubt that this is a separate payment for the crop as such. The amount paid is what would be paid to a tenant having the right to remain in occupancy and remove the crop.

If different methods of determining the amount payable for the crop were to be followed this matter would require reconsideration. The advice given you in this letter is applicable to the present practice.

Respectfully,

RHODA V, LEWIS
Deputy Attorney General