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STATE OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL

Honolulu, Hawaii 96810

April 16, 1964

Honorable Edward J. Burns
Director of Taxation
State of Hawaii
Honolulu, Hawaii

Attention: Mr. August H. Landgraf, Jr.
Deputy Director of Taxation

Dear Sir:

This is submitted in response to your letters of February 26 and March 24, 1964, requesting our opinion on the interpretation to be given to that portion of section 128-1 of the Revised Laws of Hawaii 1955 defining real property for taxation purposes.

The pertinent portion of said section provides as follows:

> "Sec. 128-1. Property defined. 'Property' or 'real property' means and includes all land and appurtenances thereof and the buildings, structures, fences and improvements erected on or affixed to the same, excluding, however, any growing crops, all machinery and other mechanical or allied equipment and the foundations thereof, telephone, telegraph and electric poles, lines, conduits and appurtenant equipment, pipelines, gas and water mains and appurtenant equipment, penstocks and forebays, railroads (including rails, ties, switches and appurtenant equipment, but not including roadbeds, cuts, fills, bridges, trestles, culverts and the land itself, which latter items shall be deemed real property), and any other fixtures expressly required by law to be assessed and taxed as personal property. . . ."

Specifically, both of your requests deal with the question of whether the assessor is mandated, by the above cited section, to exclude from real property tax assessments those items of fixtures excluded from the definition of real property.

We reply that the cited section does not preclude the assessment of the enumerated items so long as such items are considered to be real property on the basis of the tests applied by the courts to determine what a fixture is.

The section, as presently worded, is in derogation of the common law definition of real property. A discovery of the purpose of its having been so worded should, then, be of aid in determining the legislative intent and thereby permit a proper interpretation of the section.

Where the language of a statute is ambiguous, the courts have referred to the history of the statute and other extrinsic matters to ascertain the legislative intent. In the Matter of Sprinkle, 40 Hawaii 485 (1954). The Civil Code of Hawaii 1858-1859, the first codification of Hawaiian laws, included provisions authorizing the taxation of both personal property and real property. See Article XII, Civil Code of Hawaii 1858-59, sec. 483-484. With respect to personal property, the applicable section therein provided as follows:

> "Section 483. . . . The term 'personal property' shall be construed to include all household furniture, goods and chattels, wares and merchandise . . . and every species of property not included in real estate." (Emphasis added.)

In the next section, real property was defined as follows:

> "Section 484. . . . The term 'real property' with respect to the assessment and collection of revenue, shall be deemed to include all lands and town lots, with the buildings, structures, and other things erected, or affixed to the same."

It appears to be clear that these sections were worded and meant to be mutually exclusive, i.e., those items taxable as personal property were not to be taxed as real property and vice versa.

In 1896, the then legislature amended the definitions of both terms by Act 51, Session Laws of Hawaii 1896, to read, in part, as follows:

> "Section 15. The term 'Real Property' for the purposes of this Act, shall mean and include all lands, and town lots and house lots with the buildings, structures, fences, wharves, improvements and other things erected or affixed to the same."
>
> "Section 16. The term 'Personal Property' for the purposes of this Act, shall mean and include all household furniture and effects, . . . wares and merchandise, machinery, . . . leasehold and chattel interest in land and real property, . . . growing crops . . . and all animals not herein specifically taxed."

The word "machinery" and the phrase "growing crops" appeared for the first time in the definitions but as items to be considered personal property and not as items excluded from the definition of real property as it is presently the case.

In 1932, by Act 40, Second Special Session Laws of 1932, a comprehensive new act revising the real property tax laws was enacted creating a separate chapter on real property taxes.

In 1933, by Act 9, Special Session Laws of 1933, the personal property tax laws were revised and re-enacted into a separate chapter. Personal property was defined therein to read in part as follows:

> "Section 2. Definitions . . . . (2) 'Personal property' shall mean and include all goods, chattels, wares and merchandise, machinery, . . . growing crops, animals and all other tangible

> property not included within the definition of real property as the same is defined in the real property tax law . . .” (Emphasis added.)

Section 13 of said Act 9 further provided in part as follows:

> “. . . The term property or real property whenever used in said real property tax law [Act 40, Second Special Session Laws of 1932 quoted herein], unless the context shall clearly otherwise indicate, shall mean and include . . . personal property.”

Here again the legislature expressed a clear intent that personal property items should not be subjected to real property taxes and, conversely, that real property items should not be subject to personal property taxes. Furthermore, by the terms of section 13 quoted above, it is also clear that the legislature intended that all property, unless otherwise expressly provided, would be subjected either to the real property tax or the personal property tax but not to both.

The definitions of both real and personal property were amended once again in 1935 by Act 153, Session Laws of Hawaii 1935. By this amendment the definition of real property was worded to read as it stands today. The pertinent part of section 1 of said Act defined real property as follows:

> “‘[P]roperty’ or ‘real property’ shall mean and include all land and appurtenances thereof and the buildings, structures, fences and improvements erected on or affixed to the same, excluding, however, any growing crops, all machinery and other mechanical or allied equipment and the foundations thereof, telephone, telegraph and electric poles, lines, conduits and appurtenant equipment, pipe lines, gas and water mains and appurtenant equipment, penstocks and forebays, railroads (including rails, ties, switches and appurtenant equipment, but not including

> roadbeds, cuts, fills, bridges, trestles, culverts and the land itself, which latter items shall be deemed real property), and any other fixtures expressly required by law to be assessed and taxed as personal property." (Emphasis added.)

Section 3 of the same Act also amended the definition of personal property to read as follows:

> "'Personal property' shall mean and include all goods, chattels, wares and merchandise; growing crops to mature and be harvested during the taxable year, all machinery and other mechanical or allied equipment and the foundations thereof; ships or vessels, whether at home or abroad; telephone, telegraph and electric poles, lines, conduits and appurtenant equipment; pipe lines; gas and water mains and appurtenant equipment; penstocks and forebays; railroads, permanent or temporary, including rails, ties, switches and appurtenant equipment, but not including roadbeds, cuts, fills, bridges, trestles, culverts and the land itself; and all other tangible property not included within the definition of real property as the same is defined in Chapter 61; excluding, however: growing crops, not maturing or to be harvested during the taxable year . . ." (Emphasis added.)

The reason for so defining real and personal property becomes clear upon examination of the committee report prepared by the Committee on Ways and Means of the Senate of the Eighteenth Legislature of the Territory of Hawaii in the regular session of 1935. In its committee report, printed in the 1935 Senate Journal, with respect to the definitions given in said Act 153, the committee stated on page 464:

> "Since the revenues derived from the taxation of real property is allotted for the support of the City and County and County governments, and those taxes from personal property to the support

> of the territorial government it was found necessary to as accurately as possible draw the line as to what is real and personal property by carefully defining each. . . ."

That the legislature intended the definitions to be mutually exclusive and complementary cannot be doubted. The definition of real property adopted in 1935, which is, with one minor exception, exactly the same as that being considered here, has excluded from its scope, almost item by item, those same items expressly defined to be personal property in the very same amendatory act. The one minor change appears to be an unauthorized changing of the phrase "shall mean and include", which appears in the 1935 definition, to read "means and includes" which appears in the Revised Laws of Hawaii 1955.

In 1947, the then legislature, by Act 111, Session Laws of Hawaii 1947, repealed the personal property tax law in its entirety. Effective as of January 1, 1948, there was no tax law applicable to personal property. In repealing it, however, the legislature did not amend the definition of real property.

It might be argued that the legislature intentionally did not amend the present definition and purposely excluded from real property taxation those items enumerated therein. This argument probably would not stand, however, in the light of the case of Territory v. Overbay, 23 Hawaii 91 (1915), where the Supreme Court of Hawaii held that unless clearly otherwise shown, statutes carried into a revision retain their original effect. If the legislature had intended to retain the exclusions despite the repeal of the personal property tax, it appears that such intent should have been clearly manifested. This was not done.

To determine legislative intent with respect to a statute, the history of its enactment may be relied upon but only where the language used is of doubtful meaning. Where the language of the statute is plain and unambiguous, which appears to be the case here, the statute must be given effect according to its plain and obvious meaning. Territory v. Fase, 40 Hawaii 478 (1954). A perusal of the present definition of real property shows that the exclusions in the definition, by plain and unambiguous language, are clearly made subject to a condition. The exclusions

appear to apply only to these fixtures which are "expressly required by law to be assessed and taxed as personal property."

It might be argued that the clause quoted in the foregoing paragraph is surplusage inasmuch as there no longer is any personal property tax law in Hawaii, and that the legislature cannot be presumed to have created the exclusions in vain. Our Supreme Court, however, has held in Pringle v. Bicknell, 15 Hawaii 323 (1903), that the courts are bound to give effect to all parts of a statute and "no sentence, clause or word shall be construed as unmeaning or surplusage if a construction can be legitimately found which will give force to and preserve all the words of the statute." Furthermore, in Cooper v. Island Realty Co., 16 Hawaii 92 (1904), the court stated that the presumption that the legislature intends every clause of a statute to have some effect is stronger than the presumption that the legislature will not require the doing of a vain thing.

It would appear that the legislative intent, whether determined on the basis of the historical development of the section or by the plain language of the statute itself, can properly be expressed by paraphrasing said section 128-1 as follows: that "property" or "real property" means and includes all lands and appurtenances thereof and the buildings, structures, fences and improvements erected on or affixed to the same, excluding, however, any growing crops, and all fixtures, including, but not limited to, all machinery and other mechanical or allied equipment and the foundations thereof, etc., but only if they are required by law to be assessed and taxed as personal property. There being no personal property tax, the condition permitting the exclusion cannot be met.

On the basis of the foregoing, it is our view and conclusion that said section 128-1 does not exclude from real property taxation those items enumerated therein and excluded from the definition of real property. We concur with your view, as expressed in your letter of request, that "the test of whether any item is personal property or real property . . . is the manner in which the article is attached to real estate, the character of the article and its adaptation, and the intention of the parties owning such property as to its

use", which is a statement of the tests American courts generally apply in determining what a fixture is.

Very truly yours,

/s/ Ralph W. Kondo

RALPH W. KONDO
Deputy Attorney General

APPROVED:

/s/ Bert T. Kobayashi

BERT T. KOBAYASHI
Attorney General