

February 19, 1919.

OPINION NO. 803.

INCOME TAX: DEDUCTIONS:

Donations or subscriptions to the Red Cross or War Relief Fund are not allowable deductions under Act 157 of the Session Laws of 1917.

Hon. Delbert E. Metzger,  
Treasurer, Territory of Hawaii,  
Honolulu, Hawaii.

Dear Sir: I beg to acknowledge the receipt of your communication of the 19th requesting the opinion of this department as to whether contributions to the Red Cross and War Relief Fund may be considered as a proper deduction from income under our income tax laws.

Section 1308, Revised Laws of Hawaii, 1915, as amended by Act 157, Session Laws of 1917, provides for deductions as follows:

- (a) Expenses incurred in carrying on any business, etc.
- (b) Interest on existing indebtedness.
- (c) Taxes and license fees.
- (d) All losses sustained during the previous taxation period, including fire losses and depreciation.

It is apparent that unless the money paid out by the taxpayer in aid of the Red Cross and for war relief purposes can be, in some way, classified under one of the foregoing classes, such payment cannot be allowed as a deduction within the meaning of the Act.

It is also apparent from an examination of those classes that the only one under which such a payment could, by even a very forced construction, be classified, would be the first, i.e., "expenses incurred in carrying on any business."

In construing the Federal income tax law, the United States Treasury Department has ruled that donations are

deductible when made by corporations for purposes connected with the operation of the property, such as charitable and educational institutions, and hospitals conducted for the benefits of the employees. Several other rulings along similar lines have been made by the Treasury Department, being all upon the theory that such donations or subscriptions had immediate and direct connection with the business of the corporation.

In Treasury Decision No. 2909 it was held that donations made to employees and others, and which do not have in them the element of compensation, are considered gratuities, and are not allowable deductions.

It is impossible for me to escape the conclusion that a donation to the Red Cross or War Relief Fund is a gratuity within the meaning of the ruling above referred to, and, therefore, not deductible.

It has been suggested that the United States Treasury Department has held that such donations are deductible under the Federal income tax act. I have been unable to find any such decision or ruling. On the contrary, I find the following report on this matter in the Treasury Decisions:

"Red Cross Donations by Partnerships and Corporations:

We understand recent ruling Treasury Department is that Red Cross contributions by a partnership are not deductible in determining partnership income for excess profit tax, but that partners in figuring their individual income taxes may deduct their proportionate amounts of such contributions subject of course to fifteen per cent limitation. Is this correct? Also are such contributions deductible by corporation on its tax returns? Please wire reply at our expense. (Answer) Your understanding as stated your telegram May twentieth regarding Red Cross contributions by partnership correct. Red Cross contributions not deductible by corporations. (Telegram of inquiry from Loomis, Suffern and Fernald, New York, N.Y., and the answer thereto signed by Commissioner Daniel C. Roper, and dated May 23, 1918.)

While this ruling by the Commissioner is not conclusive upon us, it serves as a guide to some extent, in construing our income tax law, the language of which is similar to the Federal law on the same subject, so far as it relates to deductions.

I am of the opinion, therefore, and so advise you, that the donations or subscriptions in question are not allowable deductions.

Yours very truly,

HARRY IRWIN,  
Attorney General.

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