

April 2, 1919.

OPINION NO. 822.

TAXATION: SPECIAL INCOME
TAX:

Under the provisions of Act 117 of the Session Laws of 1915, an amended, money and the value of personal property acquired by inheritance is exempt from the payment of the additional income tax prescribed by that Act.

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

Dear Sir: I have for acknowledgment your note of March 29, 1919, together with Tax Assessor Wilder's letter to you of the same date, in which the inquiry is made as to whether, under the provisions of Act 117, Session Laws, 1915, as amended, the income received by the heirs of James Campbell, deceased, is subject to the tax therein prescribed.

I have given this matter much serious consideration, and I am unable to construe the section of the law which grants this exemption in any way except that which follows the plain language of the statute.

This so-called additional income tax statute was originally, in slightly different form, Act 33 of the Session Laws of 1909. That Act was amended at the same session by Act 66 of the laws of that session, the sole purpose of that amendment being to add the following proviso:

"Provided, however, that such tax shall not be levied or assessed upon money and the value of personal property acquired by gift or inheritance."

An examination of the legislative journal of that session throws no light on the question, the report of the committee merely recommending the passage of the amendment with-

out stating the purposes or the reasons for the same. The same language (describing this exemption is used in Act 117, Session Laws, 1915, which is the Act now under consideration.

The Legislature in providing for a somewhat similar exemption in the general income tax statute, used the following language:

"Provided, further, that in assessing the income of any person or corporation, there shall not be included . . . any bequests or inheritance taxed as such." Sec. 1308 R.L. H., 1915.

The language used in the two acts provides for an exemption in the payment of an income tax, the one general, and the other special, and warrants the conclusion, from a comparison of the words used, that the Legislature must have intended a much wider exemption in the first case than in the other.

The words used in the statute under consideration are apparently so clear and free from ambiguity, that there is indeed no room for the application of the rules of construction.

"Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the Legislature should be intended to mean what they have plainly expressed and consequently, no room is left for construction." *Lake County vs. Rowllins*, 130 U.S. 670, 32 L. Ed. 1060.

I am of the opinion, therefore, and so advise you, that the income referred to in the tax assessor's letter is exempt from the payment of this additional income tax.

I discussed this matter this morning with Mr. Lewis, Chairman of the House Finance Committee, and he has asked me to draft an amendment to the bill now pending in the Legislature, which seeks to extend the provisions of the Act under consideration for a further period of two years, by which the exemptions in this regard should be confined

to money and the value of personal property acquired by gift or inheritance, upon which an inheritance tax has actually been paid.

I believe that this amendment may be so drawn as to include within the provisions of that extension, the incomes referred to during the present taxation year.

I return herewith Mr. Wilder's letter to you.

Yours very truly,

HARRY IRWIN,
Attorney General.
