

August 24, 1924.

## OPINION No. 1163

## TAXATION.

INDEPENDENT INCOME. The expression, "female inhabitant \* \* \* having an independent income," as used in the statutes concerning personal taxes, was not intended to include the case of a woman who is supported by her husband but who occasionally makes a little money through her own exertions.

## EQUALITY AND UNIFORMITY.

Neither in the federal constitution nor in the Organic Act of the Territory of Hawaii is there any requirement that taxation in the Territory shall be equal and uniform. However, the local statutes as to personal taxes—as amended in 1923—do not offend in the matter of inequality and non-uniformity.

## STATUTORY CONSTRUCTION.

PRESUMPTION OF VALIDITY. There is always a presumption of law, rebuttable though it is, that legislation is valid.

Honorable Henry C. Hapai,  
Treasurer of the Territory of Hawaii,  
Executive Building,  
Honolulu, Hawaii.

Sir:

You have asked for my understanding of the expression, "independent income", as it appears in Sections 1224, 1225 and 1226 of the Revised Laws—as amended by Act 226, 1923—those sections referring, respectively, to the poll, the school and the road taxes, the three together being styled the "personal taxes". It will suffice to quote the first:

“Section 1224. Poll Tax, An annual tax of one dollar (\$1.00), shall be paid by every male inhabitant of the territory and by every female inhabitant of the territory, having an independent income, between the ages of twenty and sixty years, unless exempted by law.”

The 1923 amendment consisted in the insertion of the words, “and by every female inhabitant of the territory, having an independent income”.

To interpret the last four words just quoted to mean that any woman within the age limits stated shall pay the tax if she has received any income whatever by her own exertions—as when a woman supported by her husband makes and sells a few lauhala hats—is so extremely technical as to be absurd.

These are the days of the “new woman”, the one who is often found supporting herself and otherwise taking care of herself without requiring assistance from anyone. Such a woman really has an “independent income” and it was intended that she should be taxed as is a man. Common examples of this financial independence are teachers, stenographers and nurses.

Where a woman earns—or, perhaps, merely receives, as a matter of right rather than of gratuity, without exactly earning—such an income as maintains her in her station in life, whatever it may be, independently of outside assistance, she may be said to have an “independent income” in the sense in which the Legislature used those words.

Besides these two possible meanings for this expression just quoted, consideration also should be given to the criticism made of the amendatory law that it is unconstitutional because of inequality and non-uniformity. The present law is undoubtedly difficult to apply, but, in my opinion, it is not unconstitutional and no unwarrantable discrimination was made.

It has been held frequently that exempting certain

classes from the payment of poll taxes is not necessarily illegal.

Tekoa vs. Reilly,  
Wash.

(91 Pac. 769)

(13 L. R. A. N. S. 901, Case note).

The question immediately presents itself as to why—apart from the very general postulate that all laws should be fair—a tax should be imposed with equality and uniformity. Is there such a requirement in the federal constitution or in the Organic Act of the Territory of Hawaii?

Paragraphs in Sections 8 and 9 of Article I of the federal constitution read, respectively:

“The Congress shall have Power To lay and Collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;”

“No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.”

As stated by Mr. Justice Frear, in *Campbell vs. Shaw*, 11 Haw. 123: “Under the Federal constitution, for instance, direct taxes must be laid by the rule of apportionment among the several States; and duties, impost and excises must be laid by the rule of uniformity.” That is, this requirement of uniformity in the constitution of the United States is not as to direct taxes, including cavitation, or poll, taxes, but concerns duties, impost and excises.

Furthermore, these constitutional restrictions are only upon legislation by Congress with respect to the imposition and collection of federal taxes within the states.

## 37 Cyc. 717.

“Congress has plenary power over the territories unlimited by the restrictions of the constitution, so long as they remain in a territorial condition \* \* \* ”

## 38 Cyc. 200

## 1 Cooley on Taxation (3rd ed. ) 178.

“But this regulation”—the constitutional one as to direct taxes—“is expressly confined to the states, and creates no necessity for extending the tax to the district or territories.”

Loughborough vs. Blake,  
5 Wheaton 317, 323  
(5 Law ed. 98, 99).

The constitutions of the several states generally contain provisions as to uniformity in taxation. Nothing of that nature appears in the Organic Act of Hawaii, nor in the local statutes.

“The organic law of a Territory takes the place of a constitution, as the fundamental law of the local government. It is obligatory on and binds the territorial authorities; but Congress is supreme and, for the purposes of this department of its governmental authority, has all the powers of the People of the United States, except such as have been expressly or by implication reserved in the prohibition of the Constitution.”

First Nat. Bank of Brunswick vs. Yankton,  
101 U. S. 129, 135  
(25 Law ed. 1046, 1047).

The Organic Act refers in broad terms, to “rightful subjects of legislation”. Of this the local Supreme Court has observed, in connection with taxation:

“Suffice to say that congress has declared “That the legislative power of the Territory shall extend to all rightful subjects of legisla-

tion not inconsistent with the Constitution and laws of the United States locally applicable.’ Organic Act, section 55. The power to authorize the assessment and collection of taxes is not only a rightful subject of legislation, but it is an indispensable power Incident to ail forms of civilized government. “Taxes are defined as being the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government, and for ail public needs. \* \* \* The power of taxation is an incident of sovereignty, and is coextensive with that of which it is incident.’ Cooley on Taxation, 1, 3.”

Keola vs. Parker,  
21 Haw. 597, 600.

The constitution of the Republic of Hawaii was more definite, in treating of the taxing power, than is the Organic Act.

Campbell vs. Shaw,  
11 Haw. 112, 119, 124.

There appears, then, to be no specific provision either in the federal constitution or in the Organic Act, with respect to uniformity in taxation, applicable to the Territory of Hawaii.

“It is a universally accepted principle of taxation that taxes should be levied with equality and uniformity and in accordance with some reasonable system of apportionment, calculated to justly distribute the public burden, but in the absence of any provision in a state constitution requiring either expressly or by necessary implication, uniformity and equality of taxation, a taxing statute which is open to the charge of imposing unequal burdens of taxation, and not taxing uniformly those in the same class, cannot be adjudged void as contrary to natural justice.”

26 R. C. L. 241.

“In the absence of constitutional limitations, there is, it is said, no restraint whatever upon the Legislature, and it may discriminate in favor of or against a particular class of persons or property, and

pass laws in violation of every principle of just government, by an unequal distribution of the public burdens. The check upon such an abuse of power is in the influence of constituents over their representatives, and the weight of authority is that the courts have no right to interfere with this exercise of the legislative will. \* \* \*

Experience In many of the states has shown that the principles of taxation should not be left to the uncertainty or caprice of successive Legislatures, but that they should be fixed and immutable, and embodied in the fundamental law, under whose broad shield all property, of whatsoever species, may be equally protected.”

Redmond vs. Town of Tarboro,  
106 N. C. 122,  
(10 S. E. 845)  
(7 L. R. A. 539, 540).

The power of taxation generally, unless specifically restrained, is unlimited as to persons and things.

11 Enc. U. S. S. C. Rep. 374.

A statement was just made to the effect that there is no constitutional requirement that taxes in the Territory of Hawaii should be levied with equality and uniformity. Let it be supposed, though, that the Organic Act does contain such a requirement. Would these statutes as to personal taxes be in contravention of such a provision? I think not, for the reasons stated in the case note to *Tekoa vs. Reilly*, as above cited in *Lawyers Reports' Annotated*. There was a justifiable reason for the Legislature making a distinction between women who have independent incomes and those who have not. In exempting the women without independent incomes, the Legislature probably reasoned as formerly when, in considering males only, young men and old men were exempted, firemen, soldiers and clergymen, and also the infirm and the indigent and lepers.

Finally; there is always a presumption of law, rebuttable though it is, that must be considered here.

“The principle is universal that legislation, whether by Congress *or* by a state”—or by a territory—“must be taken to be valid, unless the contrary is made clearly to appear; and as the contrary does not so appear, the statute of Colorado is to be taken as a constitutional exercise of the power of the state.”

Reid vs. Colorado,  
187 U. S. 137, 153,  
(47 Law ed. 108, 116).

Respectfully,

JOHN ALBERT MATTHEWMAN,

Attorney General.