

August 21, 1928.

OPINION No. 1492.

TAXATION: INCOME; COMPENSA-
TION OF UNITED STATES REF-
EREE IN BANKRUPTCY:

Exempt from Territorial Income
Taxes.

Honorable Henry C. Hapai,
Treasurer, Territory of Hawaii.
Honolulu, T. H.

Sir:

In reply to your letter of August 10th, 1928, request-
ing the opinion of this department as to whether or not
the compensation received by a United States Referee
in Bankruptcy is subject to the Territorial Income Tax,
I wish to advise you as follows:

Section 33 of the Bankruptcy Act of 1898 creates
an inferior judiciary officer of the United States and
denominates him "Referee." Section 34 of the Bank-
ruptcy Act provides that the term of office of a Referee
shall be two years; section 36 provides that a "Referee
shall take the same oath of office as that prescribed for
Judges of the United States Courts," and section 40
of said Act makes provision for compensation Referees
by granting to them a fee of \$15.00 deposited with the
Clerk of the Court at the time the Petition in Bankruptcy
is filed, and provides for certain other fees to be paid
as part of the cost of administration, the entire com-
pensation being charged against the estate of the Peti-
tioners in Bankruptcy.

A referee in bankruptcy executes his office for the
public good. This implies his right to reap the compen-
sation for the services rendered without that compensa-
tion being in any way lessened, except by the sovereign

power from whom he receives his appointment. The power of the United States government can only be executed by officers whose services must be compensated in a manner prescribed by Congress. The allowance is in its discretion. The presumption is that the compensation given by law is no more than the service is worth, and only such an amount as will secure from the officer the diligent performance of his duties.

The compensation of an officer of the United States is fixed by a law of Congress. It is in its exclusive discretion to determine what shall be given and a law of a State imposing a tax on the office which diminishes the recompense, is in conflict with the law of the United States which secures the allowance of the officer. (26 R. C. L., 103) A State cannot lay any tax on the office of judicial, military or civilian officers of the United States or on any salary or income derived from it. (37 Cyc. P. 84.)

It is well settled by the United States Supreme Court that no State can tax the compensation allowed by the Federal government to its officers. (See *Dobbins vs. Erie County*, 16 Peters 435, 10 L. Ed. 1022). In this case the decision was placed mainly on the ground that the officer was a means or instrument employed for carrying into effect some of the legislative powers of the United States government, which could not be interfered with by taxation or otherwise by the States, and that the salary or compensation for the services of the officer was inseparably connected with the office; that if the officer as such, was exempt, the salary assigned for his support and maintenance while holding the office was also, for like reasons, equally exempt.

If the local legislature could lay an income tax upon the compensation received by a referee in bankruptcy, it could tax the office to such an extent as to make it unprofitable, or virtually tax it out of existence, and thus arrest the machinery of the Federal government.

The fact that the compensation of the referee is paid out of the estates of the bankrupts themselves does not affect the question, as the source of the income is immaterial, so long as the tax has the effect of diminishing the emoluments of the office which are granted by the laws of the United States.

Respectfully,

E. R. MCGHEE,
Third Deputy Attorney General.

APPROVED:

H. R. HEWITT,
Attorney General.