

October 15, 1928.

OPINION NO. 1510

TAXATION—INCOME—PERSONAL
SERVICES:

Section 1388, Revised Laws of Hawaii, 1925, contemplates taxation of income derived by accountant for services performed on mainland when such services are incidental to business conducted in Hawaii.

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

Sir:

Under date of June 20, 1928, you requested the opinion of this Department relative to the following:

Whether income derived from services performed on the mainland by a professional accountant whose business domicile is in the Territory of Hawaii is taxable by the Territory of Hawaii.

The facts upon which you request the opinion are set out in a letter from Henry Glass to you under date of June 20, 1928, which letter is attached to your communication, and as stated therein, appear to be as follows: The taxpayer is a professional accountant and partner in an accountancy firm with its principal place of business located in Honolulu, and, in pursuance of such business, the taxpayer performed certain services on the mainland before the Internal Revenue Department for a client located in and doing business in Hawaii; that such services resulted from employment originating in Hawaii, that remuneration therefor was received in Hawaii upon termination of the said employment, and that the client employing the taxpayer is by virtue of the local statutes entitled to deduct such remuneration as an expense from its income tax return.

Upon these facts you are advised that such income comes within the purview of Section 1388, R. L. 1925, and that the same is subject to the tax therein provided.

In the absence of a showing that the domicile of the taxpayer has been changed by the transaction of such business on the mainland, it is to be presumed that the taxpayer continued his domicile for business purposes in Hawaii. Such incidental services that might be performed by him on the mainland are to be given consideration only to the extent that they reflect an independent business being carried on outside of this jurisdiction. If such transactions are a part of the business done here, originating and terminating in Hawaii, and compensation therefore is received in Hawaii, it cannot be logically contended by the taxpayer that the income does not reflect the activities of the business in Hawaii.

The principles enunciated in *Ewa Plantation Company vs. Wilder*, 26 Haw., 299, are of persuasive assistance in the determination of this question, and in the absence of a showing of independent control exercised on the mainland, the presumption is that such services are incidental to the business conducted in Hawaii. Likewise such presumption attaches to income derived therefrom and the character thereof determined by the domicile of the business.

Very truly yours,

H. T. KAY,

First Deputy Attorney General.

APPROVED:

H. R. HEWITT,

Attorney General.