

uty Assessor, by W. F. Frear Esq., all relating to the construction of the general and special income tax laws of this Territory. Judge Frear in his letter to Mr. Palmer makes three contentions, namely:

First: That under our general income tax laws gifts acquired during the taxation year are not taxable as income.

Second: That under our special income tax laws such gifts are not taxable, and

Third: That the \$6000.00 exemption provided for by Section 1, Act 206, S. L. 1919, applies to each member of a family.

First: It seems to me that the first question above indicated has been definitely answered by the Supreme Court of this Territory in the case entitled *Halstead vs. Pratt*, 14 Haw. 38 at 41, the opinion in which case was rendered by Chief Justice Frear himself, where it was said: "It may be noticed that the only income covered by Section 1 (Sec. 1305 R. L. H. 1915) is that derived from property and business, etc., and that since an inheritance is not derived from any of those sources it is not covered at all by Section 1. But we presume that construing all parts of the Act together Section 3 (Sec. 1807 R. L. H. 1915) may be regarded as enlarging Section 1 so as to include inheritances." There can be no doubt but that if Section 1307 be regarded as an enlargement of Section 1305 so as to include inheritance, it must be also regarded, as enlarged so as to include gifts. The ruling in *Halstead vs. Pratt* was later approved in *Wilder vs. Hawaiian Trust Company Ltd.*, 20 Haw. 589-595. I am therefore of the opinion following Judge Wear's decision rendered in 1902 that, "money and the value of all personal property acquired by gift or inheritance" are taxable under the general income tax law. (Overruled by *Frear vs. Wilder*, 25 Haw. 603.)

April 19, 1920.

OPINION NO. 923.

INCOME TAX—GIFTS.

Under the provisions of Chapter 94, R. L. H. 1915, and of Section 1, Act 206 S. L. 1919, money or property acquired by gift forms a part of the income for taxation purposes.

SAME—EXEMPTION.

Under the provisions of Section 1, Act 206 S. L. 1919 a fixed exemption of \$6000.00 is allowed to each individual taxpayer and cannot be considered as a family exemption.

Honorable Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, T. H.

Dear Sir: I beg to acknowledge the receipt of your communication of the 31st ult., together with a letter addressed to you by Charles T. Wilder, Tax Assessor, and a letter addressed to John A. Palmer, Dep-

Second: It is argued in connection with the question that there is no specific provision of said Act 206 which provides for the inclusion of gifts in computing the special income tax. With this construction I cannot agree. Section 1 of Act 117, S. L. 1915, of which said Act 206 is an amendment, specifically and entirely exempted from the operation of that Section, "money and the value of personal property acquired by gift or inheritance." This exemption was modified, however, by said Act 206 so that only "money and the value of personal property acquired by will or inheritance otherwise taxed as such" is exempted. It seems clear to me that this modification of the original statute read in connection with the other parts of this Section manifests the plain intent of the legislature to impose a tax upon all property received by the tax payer during the year except that which is specifically excluded or exempted.

If in the use of the word "gift" Judge Frear intends to confine the meaning of that word to a present gift from a living person to a living person it is possible that he might be able to sustain that contention. Applying the rule of exclusion, however, it would seem clear that the legislature intended to include everything as taxable which is not by Act 206 specifically excluded.

It must be remembered that the claim here set up is a claim of exemption and the rule in that regard is that the statute must be strictly construed against the party claiming such exemption.

In view therefore of the fact that only certain kinds of property are excluded from the operation of Section 1 of said Act 206 and in view of the further principle above suggested that the statute must be strictly construed against a claim of exemption, I am of the opinion and so advise you that this claim of exemp-

tion, even though it relates to gifts inter vivos solely, should be disallowed.

Third: The contention here is that each individual member of a family is entitled to the exemption of \$6000.00 provided by Section 1 of said Act 206. With this contention I agree. It seems to me clear from the wording of the statute that each individual making the return under this law is entitled to claim this exemption.

I return herewith the letters which you forwarded to me: I am,

Yours very truly,

HARRY IRWIN,

Attorney General.