

January 20, 1921.

OPINION No. 959

INHERITANCE TAX: EMMA  
DREIER TRUST.

Under the facts shown it is held that the transfer under the Emma Dreier Trust Agreement is not a taxable transfer.

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

Dear Sir: In October, 1920, you, in company with Mr. Wild (Frear, Presser, Anderson & Marx), briefly discussed with me the question as to whether or not under the facts surrounding the Emma Dreier Trust any inheritance tax became due to the Territory upon the transfer of certain shares of capital stock of August Dreier, Limited, on the death of the said Emma Dreier to the persons designated in said trust agreement.

Mr. Wild was suddenly called away to the mainland and the questions then raised were left for settlement until his return. During the present week this discussion has been resumed between Mr. Wild and myself and all the facts and the law governing the question carefully considered, as a result of which I now advise you that in my opinion no tax is due on said transfer.

A careful analysis of the facts shows that notwithstanding certain expressions used in the equity decree (Equity Case 1632, First Circuit Court) and in the trust agreement Emma Dreier never possessed anything more than a bare life estate. The analysis shows that the original beneficiaries under the will of their father,

August Dreier, in compromise of a pending action agreed with Emma Dreier that she should take a life estate in a certain number of shares of capital stock of August Dreier, Limited, upon which shares they had previously paid an inheritance tax (see *Brown vs. Treasurer*, 20 Haw. 41) and upon her death the said original beneficiaries were to again take full title to the said shares. The Territory has therefore already received a tax on the transfer of this property and even if by a strict construction of the terms of the said decree and trust agreement it could be said that for a momentary period of time Emma Dreier had taken full legal title to those shares, I am not inclined to advise action which would in my opinion work an injustice to those original beneficiaries and require them to pay the same tax twice on the same property.

It is doubtful also whether in any event this could be considered as a taxable transfer within the meaning of the statute. It could be urged with considerable force that the entire transfer was made for a valuable consideration, to-wit, the settlement of pending litigation, and under these circumstances the transfer could not be said to have been made either in contemplation of death or to take effect after the death of the donor. It is very doubtful whether under these circumstances Mrs. Dreier could be regarded as the donor, grantor, or bargainor.

I am of the opinion therefore, and so advise you, that no tax is due upon the said transfer and that you should so certify.

I am,

Yours very truly,

HARRY IRWIN,

Attorney General.