

March 7, 1921.

OPINION No. 964

INHERITANCE TAX: TREATY  
WITH GREAT BRITAIN.

The provisions of the treaty with Great Britain ratified July 28, 1900, have not been extended to the Territory of Hawaii.

Opinion No. 874 discussed and overruled.

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

Dear Sir: I beg to acknowledge the receipt of your communication of the 5th instant, together with a letter addressed to you by Mr. M. B. Henshaw, Secretary of the Bishop Trust Company, Limited, dated the 28th ultimo, both relating to the claim of Janet T. MacIntyre for reimbursement of certain moneys paid to the Territory as an inheritance tax under the statute.

The Bishop Trust Company, Limited, on behalf of Miss MacIntyre, now claims that there was an illegal assessment of the tax in this case to the extent of \$478.14, and notifies you of its intention to "place before the Legislature a bill for the relief of Miss MacIntyre" in that amount.

This claim to relief is based upon Opinion No. 874 of this Department, rendered under date of August 2, 1919, wherein it was held that, pursuant to the provisions of the treaty between the United States and Great Britain, ratified July 28, 1910, the Territory of Hawaii "may not impose an inheritance tax on the transfer of property by will or descent to a citizen of Great Britain larger in rate or otherwise, than that imposed on a citizen of the United States."

If this opinion were correct, Miss MacIntyre's claim for reimbursement should be allowed, but, unfortunately for me and for the claimant, I am now compelled to acknowledge error in that opinion, as it was based on an erroneous assumption of fact.

The treaty in question provides that "the provisions of the convention shall extend and apply to any territory or territories pertaining to or occupied and governed by the United States beyond the seas only upon notice to that effect being given by the representative of the United States at London by direction of the treaty-making body of the United States."

The opinion in question was based upon the erroneous assumption that the provisions of that convention had been formally extended to the territories of the United States in compliance with the above quoted portion of that treaty. This error was called to my attention in December, 1919, when, through a communication from the British Embassy of the Department of State at Washington, D. C., it was then proposed to formally extend the provisions of that convention to this territory. So far as I know, the provisions of that convention have not been extended to this Territory up to the present time, and they certainly were not so extended at the time when the tax in this case was due and payable.

I am of the opinion therefore, and so advise you, that Miss MacIntyre has no claim, either legal, equitable or moral, against the Territory for the reimbursement of this tax paid as aforesaid. You are further advised that if the Legislature should pass such an Act as is proposed, I would be compelled to advise the Auditor

to refuse payment, as such an Act would not be a legitimate exercise of legislative power.

I am,

Yours very truly,

HARRY IRWIN,

Attorney General.

P. S. Since writing the above opinion an Associated Press despatch of this date gives me the information that the Senate has consented to the extension of the provisions of this treaty to the Territory of Hawaii.—HARRY IRWIN.

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