

OPINION NO. 1698

TAXATION, UNEMPLOYMENT RELIEF; APPLICABILITY.

Act 209, L. 1933, providing for the deduction and withholding of a tax on dividends paid, incorporated by reference the definition of dividends in the income tax law, and a subsequent amendment of such definition does not relieve insurance companies from deducting such tax on dividends paid to its shareholders.

March 13, 1939.

STATUTES; CONSTRUCTION AND OPERATION.

Where the Revised Laws of 1935 refer to "dividends as defined in Chapter 65", while the original enactment of the Unemployment Relief tax law referred to "the territorial income tax law (Act 44, Second Special Session Laws 1932)", the original enactment controls.

SAME; SAME.

The rule is that where one act adopts another by referring to it as a particular statute such adoption takes the statute as it exists at the time of adoption.

Honorable Wm. Borthwick,
Tax Commissioner,
Territory of Hawaii,
Honolulu, T. H.

Sir:

You have asked our opinion as to the effect of section 1, Act 209, L. 1933, which provides in part:

"(e) 'Dividends' shall mean and include dividends as defined in the territorial income tax law (Act 44, Second Special Session Laws 1932),* * *"

Act 44, 2nd, Sp. S. L. 1932, as it then stood, defined dividends as follows:

"'Dividend' means any distribution, whether in money or in other property, made by a corporation, national banking association, insurance company, association or joint stock company, to its shareholders or holders of an interest therein on account of the ownership of such shares or interests."

In 1935, the above was amended to read as follows:

"'Dividend' means any distribution, whether in money or in other property, made by a corporation, association or joint stock company (except a

national banking association, or insurance company or a bank organized and doing business under the laws of the Territory) to its shareholders or holders of an interest therein on account of the ownership of such shares or interests, out of its earnings or profits.”

As Act 209, L. 1933 provides for the deduction and withholding of a tax on dividends paid, the question arises as to whether or not an insurance company should deduct the tax imposed by said Act 209, L. 1933 from dividends paid to shareholders under the law as it now stands; I am of the opinion that it should.

As a preliminary matter it should be noted that Act 209, L. 1933 now appears in the Revised Laws as Chapter IV of the Appendix and as there printed refers to “dividends as defined in Chapter 65”. However, the original enactment controls. *Kauai v. McGonagle*, 33 Haw. 915. In the original enactment as previously noted the reference was to “the territorial income tax law (Act 44, Second Special Session Laws 1932)”.

The rule is that where one act adopts another by referring to it as a particular statute such adoption takes the statute as it exists at the time of adoption. On the other hand, where the reference is not to any particular statute but to the law generally which governs a particular subject, the adoption by such method includes subsequent amendments of the act so adopted. 2 Lewis’ Sutherland Statutory Construction (2nd Ed.) 787, sec. 405; 59 C. J. 1060.

The reference here, at least when, as we must, we look to the original form of Act 209, L. 1933, clearly was a reference to the particular statute as it then stood, that is Act 44, 2nd Sp. S. L. 1932. It was not a reference to the income tax laws in general, but to that particular income tax law. Moreover, it seems that even a reference to “the territorial income tax law” or a reference to “Chapter 65” would be a reference to a particular act as it stood at the time of enactment of the adopting act. See *Haas v. Lincoln Park Commrs.*, 171 N. E. (Ill.) 526; *Culver v. People*, 43 N. E. (Ill.) 812.

Compare the reference in section 3, Act 42, 2nd Sp. S. L. 1933 to “the income tax laws” and in sections 5 and 6 of the same act to “provisions of law * * * relating to income taxes”. Those are general references.

My conclusion is that an insurance company should deduct the tax from dividends paid to its shareholders.

Very truly yours,

RHODA V. LEWIS,
Deputy Attorney General.

APPROVED:

J. V. HODGSON,
Attorney General.
