

ADDRESS REPLY TO
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TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL
H O N O L U L U

January 16, 1958

Honorable Earl W. Fase
Tax Commissioner
Territory of Hawaii
425 S. Queen St.
Honolulu, Hawaii

Attention: Mr. J. A. Bell, Deputy Tax Commissioner

Dear Sir:

This is in response to your letter of January 2, 1958, requesting our opinion as to whether a certain savings account in a savings and loan association under the name of Nobuichi Kimata, deceased, as trustee for Kenneth A. Kimata, his son, is subject to the inheritance tax imposed by Chapter 122, Revised Laws of Hawaii 1955.

The making of a deposit in a bank of the depositor's own money in his own name as trustee for another does not, without more, create an irrevocable trust. In re Totten, 179 N.Y. 112, 71 N.E. 748. The trust being revocable, the transfer of the funds in such an account to the beneficiary thereof is one which takes effect after the death of the depositor, 85 C.J.S. p. 943, Sec. 1147(3) e; and under a statute such as Sec. 122-2, R.L.H. 1955, which provides for the taxing of the passing of property intended to take effect in enjoyment or possession after death, the transfer is taxable. 85 C.J.S., supra; Matter of Kiernan's Estate, 134 Misc. 868, 237 N.Y.S. 290, affirmed 227 App. Div. 782, 237 N.Y.S. 811. See also Sec. 122-4, R.L.H. 1955. Accordingly, we agree with your position that "Totten trusts" are taxable transfers.

Your letter states, however, that the administrator of the estate of the decedent maintains that Kenneth A. Kimata was in the employ of the decedent and that the funds were deposited in the account by the decedent in lieu of

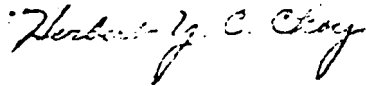
wages. If such was the situation, if the funds constituted an obligation of the decedent towards his son Kenneth, the amount on deposit would be deductible from decedent's estate. However, the claim of such an obligation should be supported by an affidavit to that effect. It should be noted, furthermore, that the payment of the obligation would constitute earned income of the son.

Very truly yours,



NOBUKI KAMIDA
Deputy Attorney General
Territory of Hawaii

APPROVED :



HEBERT Y. C. CHOY
Attorney General