

November 9, 1918.

OPINION NO. 759.

TAXES: INHERITANCE TAXES:

Bond securities of Hawaiian corporations held abroad by a non-resident decedent are property within this Territory and are subject to the provision of the Inheritance Tax Law.

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

Dear Sir: I beg to acknowledge the receipt of your favor of the 7th instant in which you request a reconsideration of opinion No. 754 with regard to the subject matter referred to in the syllabus herein.

I beg to advise you in this connection that the principle in that opinion set forth is well sustained by practically all of the authorities. The states of New York, Pennsylvania, Illinois and Louisiana are only some of the states which have announced this rule. In "Ross on Inheritance Taxation," page 222, we find the following statement of the law in this regard:

"Real estate situated within a state is, under most if not all statutes, subject to the inheritance tax of that state, whether or not the owner is a resident at the time of his death and whether he die testate or intestate. But real estate situate without a state, though owned by a resident thereof, is generally not subject to its inheritance tax law, whether he dies testate or intestate. If he dies intestate, the succession is by the law of the state where the land is situated, and hence there is neither transmission nor property within the jurisdiction of the other state; if he makes a will, while the devolution is governed by the testamentary instrument, and hence in a measure by the laws of his state, still the inheritance tax statutes have been construed not to apply and thus discriminate against transmissions by will.

The principle laid down in the text above quoted is clearly sustained in the case of the *Appeal of Commonwealth*, 129 Pa. 338. In that case the court said:

"The collateral inheritance tax imposed by the act of 1887 upon real estate is a tax upon the property itself. This clearly appears from the second proviso in the third section of the act, which is, 'and provided further, that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid.' It has not been made to appear how the state of Pennsylvania can impose a tax upon real estate situate in Maryland; and not only impose a tax upon it, but also charge it with a lien for such unpaid tax: While it is conceded that the powers of the state for taxing purposes are very great, they are necessarily limited to either property or persons within her borders. All property of the citizen within the state may be taxed, and all such property outside the state as is drawn to or follows in law the person or domicile of the owner, such as bonds and mortgages, moneys at interest, etc., no matter where situate. But real estate is not drawn to the person or domicile of the owner for taxation or any other purpose, and hence cannot be taxed outside of the jurisdiction where it is situate. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax."

The same principle is laid down in the case entitled "*Re Estate of James T. Swift, Deceased*, 137 N.Y. 77. The New York case is one worthy of particular consideration by reason of the fact that the New York statute is very similar to our own, and it is said that our statute was drafted from the New York statute. In the Swift case the court said:

"Real estate situated out of the state owned by a decedent residing in the state at the time of his death, is not subject to the Collateral Inheritance Tax Laws of New York, even after it has been converted into money which is in the hands of the executors."

Many other cases might be cited sustaining the principles announced in Opinion No. 754.

Yours very truly,

HARRY IRWIN,