

March 5, 1919.

OPINION NO. 806.

TAXATION: INHERITANCE TAX:

The legatees and devisees under the will of a non-resident decedent by which certain property situate within the Territory of Hawaii passes to such legatees and devisees, are entitled to the full exemption provided for by Section 1323 of the Revised Laws of Hawaii, 1915, as amended, and such exemption as to the property passing in this Territory, may not be reduced by pro-rating the same in the proportion that the value of the estate in this Territory bears to the value of the whole estate.

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

Dear Sir: I beg to acknowledge the receipt from you of a letter addressed to you by Charles F. Parsons as the attorney for the administrator, c.t.a. of the estate of William Matson, deceased, dated February 18, 1919, in which he presents to you for consideration, the petition of John A. Scott, administrator of said estate, for the assessment of the Territorial inheritance tax upon the property of the said estate in this Territory.

The petition which is presented shows that the widow and daughter of the deceased will each receive, under the will, as their share of the property of the estate in this jurisdiction, the sum of \$7,324.69, and each claims an exemption from this amount, of \$5000.00. In your conversation with me, you suggested that they were not entitled to the whole of this exemption, but that the said exemption of \$5000.00 should be pro-rated and deducted in the proportion that the estate in Hawaii bears to the whole estate of the decedent.

I am unable to find any authority in support of this suggestion, and our statute does not seem to support it. A careful reading of Act 223 of the Session Laws of 1917, appears to me to be conclusive of the question. Section 1323 of that Act, so far as it relates to the instant case, provides that: all property which shall pass by will . . . which, *being within this Territory*, shall pass . . from any person who may so die while not a resident of this Territory . . shall be, and is subject to a tax hereinafter provided for . . . the tax so imposed shall be upon the market value of such *property* at the rates hereinafter prescribed and *only* upon the excess of the exemption hereinafter granted."

It is clear that the "property" which is referred to in the preceding quoted section is, in the case under consideration, "property" within this jurisdiction, and which is affected by our inheritance tax, and does not refer to property outside of this jurisdiction and which is not affected by that Act. It follows, therefore, that the exemption provided for is an exemption from the property passing in this Territory.

I am of the opinion, therefore, and so advise you, that the devisees and legatees referred to in this matter are entitled to the full exemption which they claim.

I return herewith the documents submitted to me.

Yours very truly,

HARRY IRWIN,  
Attorney General.