

May 29, 1925.

OPINION No. 1224.

TAXATION—INCOME:

The profits on real property sold many years after its acquisition are not subject to the Territorial income tax.

Mr. Charles T. Wilder,  
Tax Assessor,  
Honolulu, Hawaii.

Dear Sir:

Your letter of May 25th has been referred to me for reply. You ask to be advised whether or not Section 1307 of the Revised Laws of 1915, being Section 1390 R. L. 1925, has been rendered nugatory by the case of *Frear vs. Wilder*, 25 Haw. 603, or whether the provision contained in Section 1390 reading as follows, "profits realized within the taxation period from sales of real estate including leaseholds purchased within two years," should be applied in determining the amount of income taxes which a given resident may be required to pay upon profits realized upon the sale of real property.

The only ruling upon Section 1390 properly made in *Frear vs. Wilder* is contained in that sentence which differentiates between *Halstead vs. Pratt*, 14 Haw. 38, and *Wilder vs. Hawaiian Trust Company*, 20 Haw. 589, in these words:

"If it may be proper to construe those opinions as holding that a gift *inter vivos* is subject to income tax under the laws of the territory, to that extent we are not in accord with them."

In other words, the court there did not pass upon the whole section but merely said that a gift *inter vivos* is not subject to income tax.

It is a familiar rule of law, as is stated in *Frear vs. Wilder*, that tax statutes are to be construed strictly against the government and in favor of the taxpayer.

Adopting that construction and adopting the further canon of construction that all parts of a statute are to be read together and that no part is to be discarded as meaningless unless it is absolutely necessary to do so, I advise you that the phrase "profits realized within the taxation period from sales of real estate including leaseholds purchased within two years" should still bind your office in determining your assessment of profits subject to tax.

Very truly yours,

MARGUERITE K. ASHFORD,

Special Deputy Attorney General.

APPROVED:

WILLIAM B. LYMER,

Attorney General.