

October 9, 1925.

OPINION No. 1266

TAXATION:

INCOME TAX ON BUSINESS OF  
CORPORATIONS ENGAGED IN IN-  
TERSTATE COMMERCE:

The income or earnings from the business of a corporation engaged exclusively in transporting freight and passengers between Hawaiian, Mainland and Foreign ports is not subject to taxation under Sec. 1389, R. L. 1925.

INCOME TAX ON INTRA-TERRI-  
TORIAL BUSINESS:

But when such corporation is engaged in both inter-State and intra-Territorial business the income or earnings derived from intra-Territorial business is subject to taxation under said section.

Honorable E. S. Smith,  
Acting Treasurer, Territory of Hawaii,  
Honolulu, Hawaii.

Dear Sir:

Under date of July 28th, the Territorial Treasurer wrote me, enclosing copy of letter from Mr. Harold C. Hill, Income Tax Assessor of the First Division, dated July 22, 1925, and requested my opinion as to whether or not the provisions of our income tax law applied to the net earnings or income of certain corporations organized abroad but doing business for profit in this Territory.

The corporations referred to are the following: The Los Angeles Steamship Company; The Pacific Mail Steamship Company; The Matson Navigation

Company; The Oceanic Steamship Company, and The Dollar Steamship Company.

Certain of the above named companies are engaged solely in the business of transporting freight and passengers between Hawaiian, Mainland and Foreign ports; while others (at least two of said companies), in addition to the above, are engaged in traffic between Hawaiian Inter-Island ports.

Mr. Hill desires to know whether Section 1389 of the Revised Laws of Hawaii, 1925—which imposes an income tax of five per cent “on the net profit or income . . . from . . . every business . . . carried on in the Territory, of all corporations doing business for profit in the Territory, no matter where created and organized”—applies to the said business carried on by the corporations aforesaid.

I beg to advise you that the income or earnings from the business of a corporation engaged exclusively in transporting freight and passengers between Hawaiian, Mainland and Foreign ports is not subject to taxation under R. L. Section 1389. This is elementary law, and requires no citation of authorities. However, a leading authority may be quoted:

“A state” (or territory) “cannot lay a tax on Inter-state commerce *in any form* whether by way UC (1) duties laid on the transportation of the subjects of that commerce, or (2) on the receipts derived therefrom or (3) *on the business of carrying it on.*”

1 Cooley on Taxation, Sec. 369

It is, however, well settled that a state (or territory) *may* tax property within the state (or territory) belonging to a corporation engaged wholly or in part in inter-state commerce, and *may tax the intra-state business* of a corporation which is engaged in both inter-state and intra-state business.

See 1 Cooley on Taxation, Sec. 368,  
at pages 794, 795.

I accordingly advise you that the business of such of the above named companies as are engaged exclusively in inter-state or foreign commerce is not taxable under our Territorial income tax statute—although property owned by them and situate in Hawaii is subject to the provisions of our general tax law. But that, as to such of said companies as are engaged both in inter-state and intra-territorial commerce, the intra-territorial business of such companies is subject to the payment of an income tax under R. L. Section 1389.

Mr. Hill points out that the United States government uniformly taxes foreign or alien steamship companies carrying freight and/or passengers to and from United States ports—but the Federal government is not restricted or prohibited from interfering with inter-state and foreign commerce as are states and territories. This explains the difference in attitude between the Federal government on the one hand and the State and Territorial governments on the other.

Very truly yours,

WILLIAM B. LYMER,  
Attorney General.