

February 18, 1926.

OPINION No. 1323.

TAXATION; (INCOME TAX): DE-
DUCTION FOR LOSSES:

Under Section 1391, R. L. 1926, deductions allowable for losses are limited to those incurred in business, trade or enterprises entered into for profit, and are not allowable for personal or private losses unconnected with business or trade or enterprises for profit.

Harold C. Hill, Esquire.
Income Tax Assessor, 1st Division,
Honolulu, T. H.

Dear Sir:

You have asked this office for a construction of that portion of Section 1391, R. L. 1925, which reads as follows:

“In computing incomes the necessary expenses actually incurred in carrying on any business trade, profession or occupation, or in managing any property, shall be deducted, and also all interest paid by such person or corporation on existing indebtedness. And all government taxes, and license fees, paid within the taxation period next preceding shall be deducted from the gains, profits or income of the person who, or the corporation which, has actually paid the same, whether such person or corporation be owner, tenant or mortgagor; also all losses actually sustained during the taxation period next preceding incurred in trade, or arising from losses by fire not covered by insurance, or losses otherwise actually incurred, and including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in a business or trade; provided, however, that in no case shall such depreciation exceed the amount actually shown by and as written off the books.”

In asking for the opinion of this office you have made particular reference to the following claims as deductions against other income:

- “(a) A diamond ring lost through theft.
- (b) The cost of damage to a private automobile due to accident.
- (c) The loss or theft of other personal property in no way connected with or related to the business or occupation of the taxpayer.”

The substance of your request is whether or not the phrase “or losses otherwise actually incurred” has reference to losses incurred in business or trade or applies to any property losses whatsoever.

One of the primary rules of statutory construction in cases of doubt or ambiguity is that the rule of *noscitur a sociis* should be applied. That rule is: That the meaning of a word or phrase, and consequently the intention of the Legislature, may be ascertained by reference to the context and by considering whether the word or phrase in question and the surrounding words or phrases are in fact *ejusdem generis* and referable, to the same subject matter. In other words, the theory is that in construing a statute, a word or a phrase is best understood by consulting the meaning of associated words or phrases.

Territory v. Hamakua Mill Co., 23 Haw. 1;
Territory v. Honolulu R. T. & L. Co.,
23 Haw. 387, 393.

As Chief Justice Marshall has said:

“That a law is the best expositor of itself; that every part of an act is to be taken into view for the purpose of discovering the mind of the legislature; and that the details of one part may contain regulations restricting the extent of general expressions used in another part of the same act, are among those plain rules laid down by common sense for the exposition of statutes which have been uniformly acknowledged.”

Bennington v. Cox, 2 Cranch 205,

2 L. Ed. 52.

And it has also been stated:

“. . . general words in one part may be controlled and restrained by particular words in another, taken as expressing the same intention with more precision. The true meaning of any clause or provision is that which best accords with the subject and general purpose of the act and every other part.”

2 Lewis’ Sutherland Statutory Construction,
Section 348, Page 666.

In the case under discussion, therefore, although the one phrase “losses otherwise actually incurred” would, of itself, include losses not connected with business or trade or enterprises entered into for profit—yet if the general language of the Act shows that business or trade losses, only, were intended, the Act must be so construed. And in my opinion this latter is the necessary construction.

Turning to that portion of the statute in question here, it is to be observed that the necessary expenses actually incurred in carrying on a business or in managing property are declared deductible as are interest, taxes and license fees. Then follows the phrase “also all losses actually sustained . . . incurred in trade or arising from losses by fire, not covered by insurance”—a business loss but which technically speaking might not be referred to as incurred in trade—“or losses otherwise actually incurred and including a reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in a business or trade”. Throughout this paragraph it thus appears that emphasis is placed upon losses of various kinds or deductions of various sorts which might be properly deductible as being proper charges against the capital or the earning power of the business itself.

Again, the ambiguous phrase “or losses otherwise actually incurred” is sandwiched between two references relating to business losses and is qualified

as including the depreciation of property when the depreciation arises from its use in business. While such a qualification of the general meaning of the phrase “or losses otherwise actually incurred” by referring to it as including certain business costs would not necessarily mean that general phrase could refer only to business costs, it yet illuminates the intention of the Legislature, an intention apparently to use the words “losses otherwise actually incurred” in a sense general enough to include all business losses even though those losses could not be anticipated or enumerated by the Legislature, but not general enough to include losses, however, remote from business and of property solely devoted to the personal luxury or living of the taxpayer.

I, therefore, instruct you that none of the losses enumerated in your letter and recited hereinabove, as a, b and c, are properly deductible from income under Section 1391.

Very truly yours,

WILLIAM B. LYMER,

Attorney General.