

June 26, 1926.

OPINION No. 1362.

TAXATION; INHERITANCE TAX:
SHARES OF STOCK AS "PROPERTY WITHIN TERRITORY:"

Under the inheritance tax statute shares of stock in domestic corporations, owned by a non-resident decedent are "property within the Territory" and are taxable under the provisions of paid statute.

Honorable E. S. Smith,
Registrar of Public Accounts,
Honolulu, Hawaii.

Dear Sir:

Under date of June 19th you have requested my opinion on the following matter:

Robert Lougher, a British subject, died on April 23, 1925, in the Royal Hants County Hospital in England possessed of certain real property and of approximately \$25,000 worth of stocks in Hawaiian corporations in the hands of a local representative. The deceased died intestate leaving two children and a widow, all British subjects residing in England, surviving him. Under the treaty between the United States and Great Britain this estate is subject to the same tax as that of a resident citizen in Hawaii. My opinion is requested as to whether or not the said shares of stock in Hawaiian corporations are subject to the provisions of our inheritance tax statute.

Our inheritance tax law (Section 1400, R. L. H. 1925) provides that "all property * * * within the Territory" which shall pass by will or by the intestate laws of the Territory from any person not a resident of the Territory, is subject to an inheritance tax.

The precise point presented was definitely decided by our Supreme Court in the following ruling:

"Under the Inheritance tax statute shares of stock in domestic corporation owned by a non-resident decedent are property within this Territory and subject to the provisions of the act."

Estate of Hall, 19 Haw., 531.

The representative of the Robert Lougher estate, however, cites the recent case of Ewa Plantation Company vs. Wilder, decided in May, 1923, by the Ninth Circuit Court of Appeals and reported in 289 Federal at page 664, and the recent United States Supreme Court decision in Rhode Island Hospital Trust Company vs. Doughton, U.S. Supreme Court Advance Opinions, March 15, 1926, No. 9, page 355, as authorities which, it is claimed, establish the principle that shares of stock held in Hawaiian corporations cannot be considered as property located in the Territory. I infer from the claim advanced that the representative of this estate relies upon the principle of law that "the situs of personal property is governed by the domicile of the owner" and that Mr. Lougher being domiciled in England at the time of his death, the situs of these stocks must be held to be in England.

While it is true that the maxim of "*mobilia sequuntur personam*" is generally accepted, and all personal property, including choses in action, like shares of stock, are held to have the situs of the owner's domicile, nevertheless the representative of the Lougher estate overlooks the fact that shares of corporate stock have *also* a situs in the jurisdiction where the corporation is incorporated. In other words, shares of stock have a dual situs: the domicile of the owner *and* the state of incorporation.

The Ewa Plantation Company case (289 Fed.) states:

“It is a general rule of law that the situs of personal property follows the domicile of its owner.”

Opinion, page 669.
But the case also holds that:

“For purposes of taxation personal property may by statute be separated from the owner and taxed at the place where it is actually located.”

Syllabus, paragraph 4.

As to the Rhode Island Hospital Trust Company case, recently decided by the United States Supreme Court, that opinion, it is true, states that:

“In the matter of intangibles, like * * * shares of stocks * * * the situs of which is with the owner * * *” etc.

Opinion, page 356.
But it also definitely states that:

“The shares have a situs in the state of incorporation.”

Opinion, page 358.

In this connection, this U. S. Supreme Court opinion refers approvingly to the case of Tyler vs. Dane County, 289 Fed., 843, as containing “a full and satisfactory discussion,” and the syllabus in that case states:

“5. Taxation—Shares of stock have their situs at domicile of owner and state creating corporation.

Shares of corporate stock, like other personal property, have their situs at the domicile of the owner, and they also have a situs in the state creating the corporation, and the mere presence of the corporate property in the foreign state gives the stock no situs there for the imposition of an inheritance tax.”

Tyler vs. Dane County, 289 Fed. at page 844.

You are advised that it is the law that shares of stock have the situs *both* (a) of the owner’s domicile and (b) of the state of incorporation.

(This principle would not constitute double taxation, in an appropriate case, as pointed out, generally, by Justice Holmes in *Blackstone vs. Miller*, 188 U. S. at page 205, citing 116 U. S., 517, 178 U. S., 41. But this is aside from the point.)

There is nothing in the Ewa Plantation Company case (289 Federal) inconsistent with this view, nor in the Rhode Island Hospital Trust Company case, and the law definitely rules that shares of stock have a situs both at the domicile of the owner and in the state of incorporation.

There are, accordingly, no decisions which have overruled or in any way weakened the decision of the Hawaiian Supreme Court in the Estate of Hall, *supra*, and I beg to advise you that the shares of stock in Hawaiian corporations owned by this non-resident decedent are directly subject to the provisions of our inheritance tax statute.

Very truly yours,

WILLIAM B. LYMER,

Attorney General.