

February 8, 1927.

OPINION No. 1416.

TAXATION; INCOME TAXES; DEDUCTIBILITY OF DIVIDENDS RECEIVED FROM FOREIGN CORPORATIONS WHICH ARE ASSESSED AN INCOME TAX UPON THEIR PROFITS EARNED WITHIN THE TERRITORY:

There is no distinction, as far as the deductibility of dividends is concerned, between foreign and domestic corporations; dividends received from either may be deducted by stockholders if such corporations have been assessed upon their net profits earned from business carried on or property owned in the Territory.

Honorable Henry C. Hapai,
Treasurer, Territory of Hawaii,
Honolulu, T. H.

Sir:

Your request of the 31st ultimo for an opinion as to the deductibility of dividends received by persons from foreign corporations doing business within the Territory and assessed pursuant to Chapter 103 of the Revised Laws, 1925, upon the income earned from business carried on or property owned within the Territory, has been turned over to me for disposition.

The proviso of Sec. 1391, R. L. 1925, reads as follows:

“Provided, however, that in assessing the income of any person or corporation there shall not be included the amount received from any corporation as dividends upon the stock of such corporation if the tax of two per centum (amended by implication to five per centum) has been assessed upon the net profits of such corporation as required by this chapter, . . .”

In the Supreme Court decision in *Re Taxes of H. M. von Holt and George R. Carter*, 28 Hawaii 246, the Court held that dividends received by persons from stock of the San Carlos Milling Company were deductible under the above quoted proviso so long as San Carlos earned any income which would be assessable in the Territory, even though no taxes are payable due to the excess of authorized deductions over income. The only difference between that case and the one under consideration is that San Carlos was a Hawaiian, or domestic, corporation, whereas the corporations paying the dividends in question are all mainland corporations. Section 1389, R. L. 1925, provides for an assessment of the income tax against "all corporations doing business for profit in the Territory, no matter where created or organized," upon the net profit or income from all property owned, and every business, trade, employment or vocation, carried on in the Territory by such corporations. The proviso above quoted upon Section 1391 authorizes the deduction of all dividends "from *any* corporation . . . if the tax . . . has been assessed upon the net profits of such corporation *as required by this chapter . . .*".

Clearly "any corporation" includes a foreign corporation, and clearly there has been an assessment upon the net profits of a foreign corporation earning income within the Territory "as required by this chapter" if the income earned within the Territory alone has been assessed.

I must advise you that as the law stands now the dividends in question may be properly deducted.

However, it is a simple matter to remedy this situation, if the Legislature so desires, by providing that where only a part of the income of a corporation is assessed or assessable in the Territory, then only a cor-

responding part of the dividends received by tax payers within the Territory may be deducted. In this way the Territory would then succeed in securing the income tax in every instance, but never from more than one source, namely, either from the corporation or from the stockholder,

Respectfully,

H. R. HEWITT,
Second Deputy Attorney General.

APPROVED:

MARGUERITE K. ASHFORD,
Acting Attorney General.