

June 30, 1927.

OPINION No. 1441.

TAXATION: INCOME TAX: SITUS:

The fact that a local resident has executed and delivered a full power of attorney to one in New York, giving such attorney full control of her intangible personal property, does not deprive the Territory of the right to tax such intangible personal property and the income from the same.

SAME:

The creation of revocable trusts for the handling of such stocks and bonds upon the mainland of the United States does not deprive the Territory of the right to tax such stocks and bonds and the income therefrom.

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

Dear Sir:

The Attorney General directs me to reply to your letter of June 13th, asking our opinion upon the request of Mr. Harold C. Hill, Deputy Tax Assessor, First Division, concerning the income tax levied against Mrs. Helen Strong Carter. The facts are as follows:

In September, 1922, Mrs. Helen Strong Carter (Mrs. Geo. R.) executed and delivered a power of attorney to a resident of New York City, thereby giving full power and authority to said person to hold and manage Mrs. Carter's stocks, bonds, bank deposits, etc., with full power to sell and reinvest and to vote and act as her proxy at meetings.

Mrs. Carter's attorneys claim that this power of attorney takes out from under the territorial income tax law the income received by Mrs. Carter from property so held and managed.

I beg to advise you that although the execution and

delivery of this power of attorney may have created such a business situs in New York for such stocks, bonds, bank deposits, etc., as would entitle the State of New York to tax the same and the income therefrom, such procedure does not deprive the Territory of its right to tax such stocks, bonds, etc., and the income therefrom. There is no reason why the property may not be doubly taxed if it secures protection in both States. Mrs. Carter still owns and controls the property and from the statement of facts you have given us she may at any time revoke the power of attorney. The property thus remains within the jurisdiction of the Territory.

Fidelity & C. Trust CO. v. Louisville, 245 U. S. 54; 62 L. Ed. 145; L. R. A. 1918 C, 124;
Ewa v. Wildcr, 289 Fed., 664;
Citizens National Bank v. Durr, 257 U. S. 99; 66 L. Ed. 149;
Bullen v. Wisconsin, 240 U. S., 625; 60 L. Ed. 830;
Cream of Wheat Co. v. County of Grand Forks, 253 U. S., 325; 64 L. Ed. 931;
Hawley v. Malden, 232 U. S. I; 58 L. Ed. 477.

In our opinion, this reasoning would apply equally well to trusts created by local persons for the handling of stocks and bonds upon the mainland, if those trusts be revocable.

Bullen vs. Wisconsin, 240 U. S., 625; 60 L. Ed. 830.

Yours truly,

MARGUERITE K. ASHFORD,
First Deputy Attorney General.

APPROVED:

WILLIAM B. LYMER,
Attorney General.