

April 12, 1920.

OPINION NO. 922.

INHERITANCE TAXATION — NON-
RESIDENT DECEDENT:
Stocks of foreign corporations
SAME—SAME—

Bonds and other evidences of indebtedness of foreign corporations actually kept within this Territory and owned by a non-resident decedent are property within this Territory and taxable as such.

Honorable Delbert E. Metzger,
Treasurer, Territory of Hawaii,
Honolulu, T. H.

Dear Sir: I beg to acknowledge the receipt of your communication of the 9th inst., requesting my opinion as to whether stocks and securities of foreign corporations whose property and business is entirely within the Territory and which were owned by a non-resident decedent are property within this Territory and therefore taxable under our Inheritance Tax Statute. It appears from your letter that the question at the present time is a purely academic one, there being no ease pending before you in which this question is involved.

With regard to the stock of foreign corporations owned by a non-resident decedent it has been held repeatedly by the Appellate Courts of several jurisdictions, that such stock is not taxable under Inheritance Tax Statutes almost identical with ours. The precise question as to whether such stock would be taxable if the property and business of such foreign corporations were situated within this Territory has never been passed upon so far as I have been able to determine.

The reasoning, however, in support of the general proposition above stated also supports the conclusion that such stock is not taxable even though the entire business and property of the corporation be situated in this Territory

McElroy on the Transfer Tax Law, at page 266, lays down the general rule that "Stocks of foreign corporations owned by a non-resident decedent although *such shares are within the state at the time of death* are not taxable."

This precise question was before the Appellate Court of the State of New York in the case entitled *In re James' Estate*, 144 N.Y. 6, 38 N.W. 961. In that case the decedent was a subject of Great Britain and left a large estate in New York consisting, among other things, of stocks of various corporations foreign to the State of New York. The Appellate Court in holding that such shares of stock even though actually within the State, were not taxable, said:

"The stocks of foreign corporations which formed part of this estate were not property in the legal sense. The share certificates which the testator held represented the interests which he possessed in the corporations which issued them, and the legal situs of that species of personal property is where the corporation exists, or where the shareholder has his domicile. We so held in the *Enston Case*, supra, and the Act of 1887 furnishes no evidence of any intention to change the policy of the law, which has regarded the stocks of foreign corporations as being taxable only in the place of the owner's residence or in that of the corporation's."

The same rule would apply to the bonds and securities of such foreign corporations owned by non-resident decedent so long only as such bonds and securities were not deposited or kept in this Territory. If, however, such bonds or other securities should be kept

within this Territory by a non-resident decedent and should be found here at the date of his death, they would be, in my opinion taxable under our statute.

See matter of Whiting, 150 N. Y. 27, 44 N. E. 715; matter of Morgan, 150 N.Y. 35, 44 N.E. 1126.

I am,

Yours very truly,

HARRY IRWIN,

Attorney General of Hawaii.
