September 10, 1920.

OPINION NO. 940.

INHERITANCE TAX:

Under the provisions of Section 1323 R. L. H. 1915 as amended by Act 223 S. L. 1917, the Territory is not entitled to receive inheritance tax on real estate situated outside of the jurisdiction of the Territory.

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

Dear Sir: Your letter dated August 26, 1920, in which you ask if real properties belonging to a resident decedent and located outside of this Territory are subject to our inheritance tax, has been duly received and considered by this Department.

The Revised Laws of Hawaii of 1915, Section 1323 as amended by Act 223 of the Session Laws of Hawaii of 1917, provides as follows.

"All property which shall pass by will or by the interstate laws of this Territory, from any person who may die seized or possessed of the same while a resident of this Territory . . . shall be and is subject to a tax . . ."

The question propounded is as to the right of the Territory to levy inheritance tax on certain property belonging to a person resiring in the Territory at the time of his decease.

The statute above referred to is practically the same as the statute in New York, Pennsylvania, Illinois and many other states of the Union, the statute of New York and Illinois being as follows.

"All property, real, personal and mixed, whlch shall pass by will or by the intestate laws of the state from any person who may die seized or possessed of the same while a resident of this state, or if decedent was not a resident of this state at the time of his death, such property or any part thereof shall be within the state shall be subject to inheritance tax."

The question has received judicial determination in many of the states, and it has universally been held that real estate situated without a state, though owned by a resident thereof, is generally not subject to its inheritance tax laws whether the owner thereof dies testate or intestate, the only exception to this rule being in the case of real estate which has been converted into personality by specific direction of the testator (See note on this subject, 127 American State Reports, 1088).

In Pennsylvania it was held that real estate situated in Maryland was not subject to a collateral inheritance tax, the court holding that all property of the citizen within the state may be taxed, and all property outside of the state. which is drawn to or follows in law the person or domicil of the owner, such as bonds, mortgages, etc., no matter where situated; but real estate is not drawn to the person or domicil of the owner for taxation or any other purpose, and hence cannot be taxed outside the jurisdiction where it is situated (Bittinger's Estate, 129 Pa. 338, 18 Atl. 132; Appeal of William Potter, 212 Pa. 315, 1 L. R. A. N. S. 400).

In a note to State v. Hamlin, 88 Me. 495, contained in 41 American State Reports 584, the question is discussed and it is held that "real estate situated out of the state and owned by a decedent residing in the state at the time of his death is not subject to a collateral inheritance tax", and many authorities are cited in support of this doctrine.

In the Estate of James T. Swift, Deceased, 8 L. R. A. 709, it was held that real estate situated out of the state, owned by a decedent residing in the state at the time of his death, is not subject to the collateral income tax law of New York, even after it has been converted into money which is in the hands of the executor.

In re Marr's Estate, 24O Pa. St. 38, it was held that a testator's real estate not situated within the state and not converted into personality by his will is not subject to a collateral income tax.

In 27 R. C. L. 211, the law is laid down as follows:

> "The succession to the real estate depends upon the law of the state to which it is situated and not upon that of the domicil of the owner and there is no jurisdiction upon which to base an inheritance tax in the state of the owner's domicil with respect to real estate situated in another state. If the deceased left a will, while the devolution is governed by the testamentary instrument, and thus in a sense by the law of the tesator's domicil the will can have no effect with respect to real property in another state unless it is admitted to ancillary probate in such state, and the inheritance tax laws of the testator's domicil have not been held to apply in such a case."

It is the opinion of this Department and you are so advised that your question should be answered in the negative.

Yours sincerely,

J. LIGHTFOOT,

Acting Attorney General.