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Op. 60-87

TERRITORY OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL

HONOLULU

July 25, 1960

Honorable Earl W. Fase
Director of Taxation
State of Hawaii
Hale Auhau
Honolulu, Hawaii

Attention: Mr. J. A. Bell
Deputy Director of Taxation

Dear Sir:

This concerns the amount of exemption and the tax rate applicable under the inheritance tax law (chapter 122, Revised Laws of Hawaii 1955 as amended) to testamentary dispositions by a decedent to (1) a child adopted by the decedent's daughter and (2) to a great grandchild of the decedent.

Section 122-5, R.L.H. 1955 as amended, sets forth three categories of exemptions and inheritance tax rates as follows:

> "When the beneficial interest in any property or income therefrom, passes as above provided to or for use of decedent's surviving spouse, the rate of the tax shall be at the following percentage rate of the market value of such property, received by such persons in excess of $20,000, viz:
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> . . . . .
>
> "When the beneficial interest in any property or income therefrom passes as above provided to or for the use of decedent's father, mother, child, grandchild, or any child adopted as such in conformity with the laws of the Territory, the rate of the tax shall be at the following percentage rate of the market value of such property, received by each person in excess of $5,000, viz:
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> . . . . .

> "In all other cases, the rate of tax on the market value of such property in excess of $500 shall be as follows, viz:
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> . . . . "

The question presented is whether either of the devisees herein concerned is a "grandchild" as the word is used in the second paragraph of section 122-5.

This office is of the opinion that the adopted child of the decedent's daughter is the decedent's grandchild within the meaning of the statute, it being assumed for the purpose of this opinion that the child was legally adopted.

Section 331-16, R.L.H. 1955 as amended, on the subject of the effect of adoption provides in part

> "...for all other purposes [a legally] adopted child and his adopting parent or parents shall sustain towards each other the legal relationship of parents and child and shall have all the rights and be subject to all the duties of that relationship, the same as if the child were the natural child of such adopting parent or parents,..."

In the case of Estate of Kamauoha, 26 Haw. 439, there was involved an earlier statute on the effect of adoption, which statute contained a clause substantially identical to that above quoted from section 331-16. It was there said that if by statute an adopted child is deemed to be for all legal purposes a child of the adopting mother, it would follow that for all legal purposes the child is the grandchild of the father of that mother.

Concerning the great grandchild, this office is of the opinion that such child does not qualify as “grandchild.”

In common understanding a grandchild means the child of a child, and not a great grandchild. Thomas v. Thomas, 537 So. 630; Reick v. Richards, 176 N.E. 276; Spencer v. Title Guaranty Loan & Trust Co., 132 So. 32. There is nothing in the context of section 122-5 indicating that a meaning other than that commonly understood should be

attributed to "grandchild." See section 1-17, R.L.H. 1955, which provides that the words of a statute are to be given the popular use or meaning. Furthermore, statutes providing for exemptions from taxation, such as section 122-5, are generally strictly construed against the exemption. A great grandchild does not fall within the plain terms of the statute.

very truly yours,

NOBUKI KAMIDA
Deputy Attorney General

APPROVED:

SHIRO KASHIWA
Attorney General