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Op. No. 65-5

STATE OF HAWAII

DEPARTMENT OF THE ATTORNEY GENERAL

Honolulu, Hawaii 96813

March 4, 1965

Honorable Edward J. Burns
Director of Taxation
State of Hawaii
Honolulu, Hawaii

Dear Sir:

The following is submitted pursuant to your request for a ruling or an opinion on the questions raised by a certain taxpayer concerning, among other things, residency for income tax purposes.

As summarized by him, the taxpayer is presently living on Okinawa where he is employed by the United States government. He was born and educated in Hawaii and was graduated from a local high school in 1955. In that same year he enlisted for service in the United States Army. In 1958 he was discharged from military service and remained on Okinawa to accept employment with the United States government. His employment status continues the same to this date.

The taxpayer impliedly contends that he is not a resident, as the term is defined in our income tax statutes, of Hawaii. Further, he construes section 121-3(a) as providing that, even for residents, only such income as that which is earned within the State is taxable by the State of Hawaii. Based on the foregoing contentions, the taxpayer asks:

"(1) Under the provisions of Section 121-3(a) of the State Income Tax Law of 1957, are incomes of persons domiciled in the State of Hawaii who reside in a foreign country and employed by the U. S. Government and paid in that country considered incomes earned from sources without the State?

"(2) If these incomes are considered as earned from sources outside the State are these incomes then taxable under Section 121-3 of the State Income Tax Law of 1957?"

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We reply in the affirmative to both of the questions. We further determine that the taxpayer, on the basis of the facts as presented to us, is a domiciliary of the State of Hawaii whose income earned from his employment by the United States government on Okinawa is income taxable by the State of Hawaii.

The provisions of said section 121-3, pertinent herein, read as follows:

"Section 121-3. Income taxes by the State; residents, non-residents, corporations, estates and trusts. (a) The tax imposed by this chapter applies to the entire income of a resident, computed without regard to source in the State; . . .

"(b) In the case of a non-resident, the tax applies to the income received or derived from property owned, personal services performed, trade or business carried on, and any and every other source in the State." (Emphasis added.)

The taxpayer contends, in effect, that it does not matter whether he is or is not a resident of Hawaii since the statute provides, both with respect to residents and non-residents alike, that only such income the source of which is in Hawaii is taxable. Without more, it would appear that the taxpayer's contention is correct. However, the legislature, in its wisdom, clarified the meaning of the phrase "without regard to source in the State" in the last paragraph of section 121-1 of the Revised Laws of Hawaii 1955 as follows:

"'Without regard to source in the State' means that it is not material whether the source is within or without the State."

Based on the foregoing statutory explanation, it is clear that the entire income of a resident is taxable whether the income is earned within or without the State of Hawaii. This being so, the answer to the question of whether the taxpayer's income earned in Okinawa is taxable by the State of Hawaii hinges on a determination of his residency.

The term "resident" is defined in said section 121-1 as follows:

"Section 121-1. Definitions. 'Resident' means (a) every individual domiciled in the State, and (b) every other individual whether domiciled in the State or not, who resides in the State. To 'reside' in the State means to be in the State for other than a temporary or transitory purpose. Every individual who is in the State more than two hundred days of the taxable year in the aggregate shall be presumed to be a resident of the State. . . ."

In spite of the statutory definition, the taxpayer contends, by inference, that the words "residence" and "domicil" refer to two different things in law, and that the term "resident" as used in section 121-3 refers to one who resides in Hawaii and not to a domiciliary. In support of this contention he cites excerpts from American Jurisprudence. He concludes that although he is a domiciliary of Hawaii he is not a "resident," as the word is used in section 121-3, since he does not reside in Hawaii. Therefore, he alleges that his income earned in Okinawa is not subject to taxation by the State of Hawaii.

The taxpayer's argument is plausible but is not correct in this particular instance. By statutory definition the meaning of the term "resident" has been enlarged to include not only one who resides in Hawaii but also one who, not residing in Hawaii, is, however, a domiciliary. With respect to the proposition that the legislature has the power to change the meaning of terms, it is stated in section 262 of volume 50 of American Jurisprudence at page 254 as follows:

"The lawmaking body's own construction of its language, by means of definitions of the terms employed, should be followed in the interpretation of the act or section to which it relates and is intended to apply. Indeed, a statutory definition supersedes the commonly accepted, dictionary, or judicial definition. Where an act passed by the legislature embodies a definition, it is binding on the courts. . . ."

Clearly, the term "resident" as used in said section 121-3, and as applied to the problem presented to us by the taxpayer, refers not only to one who resides in Hawaii

but also to one who is a domiciliary. This leads us to the ultimate question of whether the taxpayer herein is a domiciliary of Hawaii although it does not appear that he questions the fact that he is a domiciliary of Hawaii. Be that as it may, on the basis of the facts leading to his residing on Okinawa and to his employment by the United States government, the only reasonable determination possible is that the taxpayer is a domiciliary of Hawaii. Based on similar factual situations this office has made the same determination in prior cases involving the question of domicil. (Opinion Letter dated September 19, 1951 from Rhoda V. Lewis, Deputy Attorney General to Honorable Torkel Westly, Tax Commissioner of the Territory of Hawaii, and Memorandum dated March 27, 1958, from Rhoda V. Lewis, Deputy Attorney General, to George Freitas, Tax Administrator.)

On the basis of the foregoing, we conclude that the taxpayer herein is a domiciliary of Hawaii and, as such, is a "resident" of Hawaii for income tax purposes. This being the case, his income, even though earned without the State of Hawaii, is the "entire income of a resident" upon which the tax imposed by chapter 121 is "computed without regard to source in the State."

Respectfully submitted,

/s/ Ralph W. Kondo

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APPROVED:

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