



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 13, 1962

Mr. Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas

Opinion No. WW-1468

Re: When the occupation tax on merchandise brokers, now Art. 19.01(2), Tit. 122A, Taxation-General, was first levied, and the period of time for which you should collect it.

Dear Mr. Calvert:

You ask us when the occupation tax on merchandise brokers, now Art. 19.01(2), Title 122A, Taxation-General, was first levied, and the period of time for which you should collect it.

This tax was first levied in 1931,¹ beginning May 26, 1931. Until January 1, 1942, it was collected by the Tax Collectors of the respective counties of the State.² The tax imposed for each year beginning January 1, 1942, and since, together with the tax delinquent for any of the years 1931 through 1941, is to be collected by you.³

In 1931⁴ the Legislature first imposed this tax by amending Subdivisions 7 and 12 of Art. 7047 of the Revised Civil Statutes of 1925 to read as follows:

¹Acts 42nd Leg., 1931, Reg.Sess., Ch. 212, p. 355, Sec. 1, subd. 7 and 12. This Act amended subd. 7 and 12 of Art. 7047, of the Revised Civil Statutes of 1925.

²Art. 7050, 7052, 7053 and 7054, Revised Civil Statutes of 1925, and Art. 7047a-20, Sec. 7, Vernon's Civil Statutes.

³Acts 1941, 47th Leg., Ch. 631, p. 1393, Sec. 1, codified by Vernon as Art. 7047a-20, Sec. 1-8.

⁴Note 1, supra.

Subdivision 7:

"From every person, firm, association of persons, or corporations, dealing in bonds, and/or stocks, either exclusively or in connection with other business, the sum of Fifty Dollars (\$50.00) for each town or city in which such person, firm, association or corporation maintains an office. For the purpose of this Act, every person, firm, association of persons, or corporation whose business it is to negotiate purchases or sales of stocks, bonds, exchange, bullion, coin, money, bank notes, promissory notes, produce or merchandise, or anything else for sale, for others, shall be regarded as a broker." (underscoring added)

Subdivision 12:

"From every person, firm, association of persons, or corporation, following the business or occupation of merchandise broker and/or commission merchant, either at wholesale or retail, in cities or towns of twenty-five thousand (25,000) or less population, an annual tax of Fifteen Dollars (\$15.00); and in cities of more than twenty-five thousand (25,000) population an annual tax of Twenty-five Dollars (\$25.00). A commission merchant in the meaning of this Act is every person, firm, association of persons, or corporation, receiving country produce, horses, cattle, sheep, hogs, grain, corn, hay, lumber, shingles, wood, coal, goods, wares and merchandise or anything else for sale, to be accounted for to the owner when sold and charging a commission therefor. The provision of this Section shall not be construed as taxing the traveling salesmen." (underscoring added)

Subd. 12 defines "commission merchant" but does not define the term "merchandise broker". However Subd. 7 in its second sentence does define a broker of merchandise. The definition of a broker who negotiates purchases or sales of merchandise contained in Subd. 7 refers to "merchandise broker" who is taxed

by Subd. 12 of this same Act. See also Attorney General Opinions Nos. O-4287 (1942) and O-3999 (1942).

A 1943 Act of the Legislature⁵ by its Sec. 6 repealed Subd. 12 of Art. 7047 of the Revised Civil Statutes of 1925, and by its Sec. 2 amended Subd. 7 of Art. 7047. This Act, insofar as pertinent to this opinion, continued in effect the occupation tax upon merchandise brokers but in a lesser amount. In its pertinent portion the 1943 amendment levies an occupation tax upon,

" . . . every person, acting for himself or on behalf of another, engaged in the business or occupation of a Broker or Factor, whether he is principally engaged in such business or not, there shall be collected Ten Dollars (\$10) per year. A 'broker' or 'factor,' for the purpose of this subsection, is every person who, for another and for a fee, commission or other valuable consideration, . . . negotiates purchases or sales or transfers of . . . produce and merchandise of any kind; whether or not he receives and delivers possession thereof; . . ."

In 1959 the Legislature expressly repealed Sec. or Subd. 7 of Art. 7047⁶ but enacted substantially the same provisions as Art. 19.01(2) of this 1959 law.⁷

The tax payable by merchandise brokers will be controlled by the rate specified in each of the foregoing Acts and the span of time during which each of those Acts was effective.

SUMMARY

The occupation tax on merchandise brokers was first levied effective May 26, 1931.

⁵Acts 48th Leg., Reg.Sess., 1943, Ch. 372, p. 654.

⁶Acts 56th Leg., 3rd C.S., Ch. 1, P. 187, Sec. 7, Note 27 (at pp. 374-375).

⁷Art. 19.01(2), Title 122A, Taxation-General.

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You should collect this tax imposed for each year beginning 1942 and since, together with the tax delinquent for any of the years 1931 through 1941.

The amount varies for different periods of time.

Very truly yours,

WILL WILSON
Attorney General of Texas

By: 
W. E. Allen
Assistant Attorney General

WEA:pw

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman
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Sam Stone
Paul Phy
L. P. Lollar

REVIEWED FOR THE ATTORNEY GENERAL
By: Leonard Passmore