



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

December 19, 1962

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

Opinion No. WW-1503

Re: Whether receipts from certain transactions are derived from "business done in Texas" for purpose of computation of corporate franchise tax.

Dear Mr. Calvert:

You ask the Attorney General whether the proceeds from sales of certain petroleum products are includable in the seller's gross receipts from its business done in Texas in ascertaining the seller's franchise tax payable under Article 7084 and Chapter 12 of Title 122A, Taxation-General, Vernon's Civil Statutes.

The controlling facts are:

1. The taxpayer is an independent oil company chartered in the State of Delaware with a permit to do business in Texas.
2. Its principal office is in Dallas, Texas.
3. It has refineries at Corpus Christi and Port Isabel, Texas.
4. It does business in several states and several foreign countries.
5. It maintains sales offices, bank accounts and numerous employees in at least three foreign states.
6. Many of the sales of products from the two refineries in Texas are initiated by the company's sales representatives working in states other than Texas.
7. Payment is generally made at the buyer's place of business outside the State of Texas.

8. Passage of title to the petroleum products passes from the taxpayer to the purchaser F.O.B. the loading points at Corpus Christi and Port Isabel.

Our answer to your inquiry is that the proceeds from the sales of the petroleum products under consideration are not receipts from "business done in Texas", as defined in Articles 7084 and 12.02, V.C.S. They should not be included as gross receipts from business done in Texas in ascertaining the franchise tax due by the oil company.

The sale, transportation and delivery of petroleum products from the refineries at Corpus Christi and Port Isabel to points outside of Texas is clearly interstate commerce.

Article 7084, V.C.S., imposed a franchise tax for the period of time under consideration beginning with the year 1956 to September 1, 1959. It used the phrase "gross receipts from its business done in Texas", as does Article 12.02 of Title 122A which supersedes it. Article 12.02 of Title 122A, Tax.-Gen., V.C.S., effective September 1, 1959, in its pertinent portion states that,

" . . . the term 'gross receipts from its business done in Texas' shall include:

"(a) Sales of tangible personal property located within Texas at the time of the receipt of or appropriation to the orders where shipment is made to points within this State,

"(b) Services performed within Texas,

". . .

"(d) All other business receipts within Texas. . . ."

(Underscoring added.)

This phrase "business done in Texas" was defined in Clark v. Atlantic Pipe Line Co., 134 S.W.2d 322 (Civ. App. 1939, error ref.) to mean,

" . . . business begun and completed in Texas, and not business begun in Texas and completed in some other state or

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foreign nation, or vice versa. In other words, that it means intrastate business."

This definition was subsequently used and approved in determining the decision in Flowers v. Pan American Refining Corporation, 154 S.W.2d 982 (Civ. App. 1941, error ref.). The facts in these two cases were very similar to the facts under consideration.

Texas has no statutory provisions authorizing apportionment of receipts from interstate commerce for purpose of state taxation as exemplified in Rock Island Refining Co. v. Oklahoma Tax Commission, 145 P.2d 194 (Okla. Sup. 1944); El Dorado Oil Works v. McColgan, 215 P.2d 4 (Cal. Sup. 1950).


#### SUMMARY

Receipts from the transactions considered are not derived from "business done in Texas".

They should not be included as gross receipts from business done in Texas in ascertaining the franchise tax due by the corporation.

Very truly yours,

WILL WILSON  
Attorney General of Texas

By:   
W. E. Allen  
Assistant Attorney General

WEA:pw

APPROVED:

OPINION COMMITTEE  
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Norman Suarez  
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REVIEWED FOR THE ATTORNEY GENERAL  
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