

Opinion No. 63-31

April 9, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. Carroll J. Lee Executive Director Oil and Gas Accounting Commission State Land Office Santa Fe, New Mexico

QUESTION

FACTS

The owner of oil and gas that has been severed delivers the oil and gas to a refinery for processing. The owner of the oil and gas does not own the refinery. The refinery processes the oil and gas and re-delivers the refined products to the owner. The refinery neither buys nor sells the products, but merely charges the owner a service fee for services rendered in refining the oil and gas. The owner sells the refined products after redelivery.

QUESTION

What tax is payable in this situation, and by whom?

CONCLUSION

See analysis.

OPINION

{*63} ANALYSIS

Prior to amendment by the {*64} Twenty-Sixth Legislature, Section 72-16-4.3, N.M.S.A., 1953 Compilation, imposed a privilege tax on the gross receipts of persons engaged in the business of refining oil and gas products. Section 72-16-8, N.M.S.A., 1953 Compilation, further provided that, where the manufacturer derived his receipts from service charges for refining oil and gas products, as distinguished from receipts derived from the sale of refined products, then the applicable tax rate would be applied to the service charges received. Hence, under the former law, a manufacturer that manufactured its own oil and gas products paid a tax on the gross receipts from the sale of the products, and paid a tax at the same rate on the gross receipts of service charges for manufacturing products owned by someone else.

Chapter 179, Laws 1963, amended Section 72-16-4.3 to remove oil and gas manufacturers from the emergency school tax. It went on to impose, instead, an oil and gas manufacturers privilege tax. Section 72-16-8 was left in its present form.

Section 4 of Chapter 179 levies "a privilege tax on manufacturers based on the value of their products". "Value" is defined as the actual price received for products by the manufacturer at his plant or refinery. Now, in the case posed, the owner of the refinery does not buy or sell the products, he merely processes them. On the other hand, the owner of the products does not process them. The question is whether the manufacturers privilege tax applies at all, and, if so, on whom is it imposed?

Chapter 179, Section 4, in Subsection C, provides the answer:

"Every interest owner is liable for this tax to the extent of his interest in the value of the products. . ."

This section makes it clear that the tax is imposed on the owner of the products being manufactured. In the normal course of business the manufacturer owns the products and sells them himself. But in the case under consideration, the manufacturer does not own the products and does not sell them.

In our opinion, the owner of the products being refined is liable for the manufacturer's privilege tax, whether or not he actually performs, or engages in, the refining. If the owner contracts to have someone else perform the refining, he does not escape the privilege tax by so doing. The only way for the owner to avoid the manufacturer's privilege tax is to sell his products to a manufacturer, who then becomes liable for the tax because he becomes the owner. Retention of ownership is retention of tax liability.

Under the facts posed, there remains the question whether a privilege tax is imposed on the gross receipts of manufacturers derived from service charges for processing oil and gas products owned by others. As we have pointed out, Chapter 179, Laws 1963, removed persons engaging in refining or processing oil and gas from liability under the general emergency school tax act. Section 72-16-8 still imposes a privilege tax on gross receipts from service charges received by persons engaged in business classified under Section 72-16-4.3. Manufacturers of oil and gas products are no longer classified under Section 72-16-4.3, and it is our opinion that, on and after April 1, 1963, no privilege tax is imposed on service charges received for processing oil and gas that belongs to others.

By: Norman S. Thayer

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