



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN  
~~XXXXXXXXXXXX~~  
ATTORNEY GENERAL

Honorable George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. 0-1557

Re: Computation of occupation tax on  
carbon black.

We received your letter of September 30, 1939, in which you request our opinion on the following question:

May a manufacturer of carbon black consolidate his sales of carbon black selling below 4 cents a pound with those selling for more than 4 cents per pound and thus be able to pay a tax on this average?

Article 7047, Section 45, Subdivision (a), Revised Civil Statutes of Texas, reads as follows:

"There is hereby levied an occupation tax on every person in this State manufacturing or producing carbon black; said tax to be one-twelfth of one cent ( $1/12$  of  $1\phi$ ) per pound on all carbon black produced or manufactured where the market value is four cents ( $4\phi$ ) per pound or less and three per cent (3%) of the value of all carbon black produced or manufactured where the average market value is in excess of four cents ( $4\phi$ ) per pound. The market value of carbon black, as that term is herein used, shall be the actual market value thereof plus any bonus or premium or other thing of value paid therefor, of the actual value which carbon black does reasonably bring in the due course of trade."

The act provides that the tax shall be paid on all carbon black produced or manufactured and the amount of the tax is to be based upon the market value thereof "where the market value is four cents ( $4\phi$ ) per pound or less and three per cent (3%) of the value . . . where the average market value is in excess of four cents ( $4\phi$ ) per pound." The provision "one-twelfth of one cent ( $1/12$  of  $1\phi$ ) per pound . . . where the market value is four cents ( $4\phi$ ) per pound or less" is a fixed and definite sum for all carbon black whose market value does not

exceed this amount. In referring to more expensive grade of carbon black the Legislature provided "and three per cent (3%) of the value of all carbon black . . . where the average market value is in excess of four cents (4¢) per pound".

It is the apparent intention of the Legislature to tax the average price of a particular grade and not to strike an average price as between the several grades manufactured.

You are, therefore, advised that in our opinion a manufacturer of carbon black should segregate his production and pay a tax upon the actual market value of each separate black produced.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Cecil C. Cammack  
Cecil C. Cammack  
Assistant

CCC:LM:wc

APPROVED OCT 23, 1939  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman