



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

June 1, 1967

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

Opinion No. M-80

Re: Whether the Texas gas and oil production taxes provided for by Chapters 3 and 4 of Title 122A, Taxation-General, Vernon's Civil Statutes, apply to gas and oil which is severed in Texas, but which is produced from a reservoir located entirely outside of Texas.

Dear Mr. Calvert:

Your request for an opinion states in part:

"A question has arisen in connection with the gas production tax provided for by Chapter 3, Title 122A, Taxation-General, Vernon's Civil Statutes, and the crude oil production tax provided for by Chapter 4, Title 122A, Taxation-General, Vernon's Civil Statutes.

"I have been advised by Magna Oil Corporation that they are drilling a well for oil and/or gas which is to be surfaced on the C. C. Hutchinson Lease, Samuel Stewart No. 1069 Survey, Grayson County, Texas. The well will be bottomed holed on the Foster-Davis Lease, Marshall County, Oklahoma.

"In order to drill the well, it was necessary for Magna Oil Corporation to obtain a permit from the Railroad Commission of Texas, however, the well will have an Oklahoma allowable.

"* * * *

"Please advise me whether or not the Texas gas and oil production taxes provided for by Chapters 3 and 4 of Title 122A, Taxation-General, Vernon's Civil Statutes, applies to the gas and/or oil which is severed in Texas, but which is produced from a reservoir located entirely outside of Texas."

Article 3.01 of Title 122A levies "an occupation tax on the business or occupation of producing gas within this State" and Article 4.02 levies "an occupation tax on oil produced within this State."

Article 3.01 further provides that a "tax shall be paid by each producer on the amount of gas produced and saved within this State" and Article 3.04 defines "producer" as "any person who produces in any manner any gas by taking it from the earth or waters in this State." (Underlining added.)

Article 4.03 provides that the tax "imposed on the producing of crude petroleum shall be the primary liability of the producer as hereinbefore defined," Article 4.01 having defined "producer" as "any person who produces in any manner any oil by taking it from the earth or waters in this State." (Underlining added.)

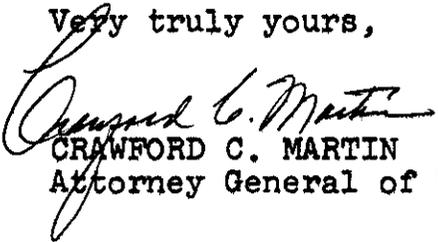
Since the taxes in question are occupation taxes, undoubtedly the Legislature could have provided for the taxes to be based on the amount or value of minerals extracted through well mouths located on the surface of this State, irrespective of whether the underground mineral reservoirs might be located beneath the surface of this State or not. However, the use of the limiting phrase "from the earth or waters in this State" in both tax statutes clearly indicates a legislative intent that the reservoir source of minerals must be located beneath the surface of this State.

Given the fact situation set out in your opinion request that the reservoir is located entirely outside of Texas, this office is of the opinion that the taxes imposed by Chapters 3 and 4 of Title 122A do not apply to oil or gas extracted from such reservoir, even though the well mouth is located on the surface in Texas.

S U M M A R Y

The Texas gas and oil production taxes provided for by Chapters 3 and 4 of Title 122A, Taxation-General, Vernon's Civil Statutes, do not apply to gas and oil which is severed in Texas, but which is produced from a reservoir located entirely outside of Texas.

Very truly yours,


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