



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-4513

Re: Is the stock transfer tax levied by Article XV, House Bill 8, Acts, Regular Session, 47th Legislature (Article 7047m, Vernon's Texas Civil Statutes), applicable to the original issue or the transfer of shares of stock, certificates, etc. of (1) The Federal Land Bank of Houston, (2) The Federal Intermediate Credit Bank of Houston, (3) The Production Credit Corporation of Houston, (4) The Houston Bank for Cooperatives, (5) Production Credit Associations, (6) National Farm Loan Association and (7) Federal Savings and Loan Associations.

Your letter of March 31, 1942, submits for our attention and opinion the following inquiries, which we quote therefrom:

"The question has arisen in this department as to whether the stock transfer tax levied by Article XV of House Bill 8, Acts of the Regular Session of the Forty-seventh Legislature, applies to stock issued by corporations organized under the Farm Credit Administration Laws, especially to such corporations as The Federal Land Bank of Houston, the Federal Intermediate Credit Bank of Houston, the Production Credit Corporation of Houston, the Houston Bank for Cooperatives and production credit associations and national farm loan associations which have their offices in various districts of the state. In light of the above I shall thank you to answer the following questions:

"Is the stock transfer tax levied by Article XV, House Bill 8, Regular Session of the Forty-seventh Legislature, applicable to shares, share accounts, certificates, or pass-books issued by such corporations?

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"Under a similar law the Federal Savings and Loan Associations are organized. Would the same rule govern the shares issued by these organizations?

"It is the information of this department that these corporations issue both Class A and Class B stock.

"I am enclosing a letter from Mr. Carl Runge, District General Counsel for The Federal Land Bank of Houston, that may be of some service to you in answering the above questions. I will thank you to return this file to this department with your reply."

The purpose and tenor of the attached letter to you from Honorable Carl Runge, District General Counsel for the Farm Credit Administration of Houston, as well as subsequent conversations with you, indicate that the real question before this department is the taxability of transfers of shares of certificates of stock of the subject corporations and associations rather than the original issue of stock by such corporations and associations. However, inasmuch as the questions submitted by you specifically speak of the taxability of shares "issued by such corporation," we think it not amiss, in passing, and to clarify the situation, to refer you to our Opinion No. 0-3594, directed to you, and holding that the tax measure in question does not apply to the original issue of stock by corporations, associations, etc. This would, of course, embrace the subject concerns.

The determination of whether or not the transfer, from one person to another, of outstanding shares of stock of the various corporations and associations mentioned in your letter, is subject to the tax in question, hinges squarely upon the incidence of the tax; because if the burden thereof is fixed directly upon these corporations or associations whose stock is sold or transferred, and such corporations or associations are Federal agencies and instrumentalities, then, under admitted principles of constitutional law, no tax would or could accrue; per contra, if the charge of this tax rests upon the seller or transferor of the stock or certificates, then the question of constitutional immunity from state taxation is not presented and the tax may be lawfully collected.

To determine this issue generous references to the Stock Transfer Tax Act become necessary. Section 1 of the Act levies the following tax:

"There is hereby imposed and levied a tax as hereinafter provided on all sales, agreements to sell, or memoranda of sales, and all deliveries or transfers of shares, or certificates of stock, or certificates for rights to stock, or certificates of deposit representing an interest in or representing certificates made taxable under this Section in any domestic or foreign association, company, or corporation, or certificates of interest in any business conducted by trustee or trustees made after the effective date hereof, whether made upon or shown by the books of the association, company, corporation, or trustee, or by any assignment in blank or by any delivery of any papers or agreement or memorandum or other evidence of sale or transfer or order for or agreement to buy, whether intermediate or final, and whether investing the holder with the beneficial interest in or legal title to such stock or other certificate taxable hereunder, or with the possession or use thereof for any purpose, or to secure the future payment of money or the future transfer of any such stock, or certificate, on each hundred dollars of face value or fraction thereof, three (3) cents, except in cases where the shares or certificates are issued without designated monetary value, in which case the tax shall be at the rate of three (3) cents for each and every share. It shall be the duty of the person or persons making or effectuating the sale or transfer to procure, affix, and cancel the stamps and pay the tax provided by this Article." (Emphasis ours)

Section 1 of the Act further provides the mode and manner of payment of such tax:

" * * * The payment of such tax shall be donated by an adhesive stamp or stamps affixed as follows: In the case of a sale or transfer, where the evidence of the transaction is shown only by the books of the association, company, corporation, or trustee, the stamp shall be placed upon such books, and it shall be the duty of the person making or effectuating such sale or transfer to procure and furnish to the association, company, corporation, or trustee the requisite stamps, and of such association, company, corporation, or trustee to affix and cancel the same. Where the transaction is effected by the delivery or transfer of a certificate the stamp shall be placed upon the surrendered certificate and canceled; and in cases of an agreement to sell, or where the sale is effected by delivery of the certificate in blank, there shall be made and delivered by the seller to the buyer, a bill or memorandum of such

sale, to which the stamp provided for by this Article shall be affixed and canceled, provided, however, that such bill or memorandum may be made in duplicate and the stamp provided for by this Article may be affixed to a duplicate of such bill or memorandum and canceled, and such duplicate of such bill or memorandum may be kept by the party making such sale in his possession, provided that he shall enter upon the original of such bill or memorandum a date and number showing that such bill or memorandum was made in duplicate and that the stamp was affixed to the duplicate thereof retained by the seller. Every such bill or memorandum of sale or agreement to sell shall show the date of the transaction which it evidences, the name of the seller, the stock, or other certificate, to which it relates, and the number of shares thereof. All such bills or memoranda of sale shall bear a number upon the face thereof and no more than one such bill or memorandum of sale made by the seller on any given day shall bear the same number. The aforesaid identification number of the bill or memorandum of sale shall in all cases be entered and recorded in a book of account." (Emphasis ours)

Even without the assistance of the conclusive authorities hereinafter cited and discussed, we believe the bare text of the statute above quoted impels to the conclusion that the incidence of the tax in question is upon the seller or transferor of shares or certificates of stock and is by no conceivable interpretation of the statute, upon the corporation or association whose stock is sold or transferred. It is quite true that other portions of this tax measure place some burden upon corporations or associations whose stock is bought and sold by the investing or speculating public, such as the keeping of proper records for inspection of the tax authorities, and affixing of tax stamps, etc.; but this burden is incidental to their right to do business in the state and is an enforcement feature only, which has been upheld in the cases hereinafter discussed as entirely constitutional. The duty of buying the stamps evidencing payment of this tax is placed squarely upon the "person or persons making or effectuating the sale or transfer." The tax here is not an ad valorem or other direct tax upon stock issued or held by the named corporations and associations, but rather is an indirect or excise tax upon the privilege of transferring such shares and lies against the person, firm or corporation exercising such privilege, to-wit: the seller or transferor of the stock. This controlling distinction, to our mind, makes the position of Mr. Runge untenable and his authorities inapposite, although with the general principle that Federal agencies or instrumentalities may not be taxed by a state, we, of course, do not differ.

Our analysis of the statute is fortified by the persuasive interpretation upon this question accorded the New York Stock Transfer Tax Act, from which the Texas Act is patterned. Opinion No. 220 by the Attorney General of New York in 1939, prior to the enactment of the instant measure, holds that transfers of the stock of a Production Credit Association, even though a Federal instrumentality, authorized by Federal law, are subject to tax. In such opinion it is said that "The imposition of such a tax upon an individual owner does not become a burden upon the Federal instrumentalities, nor does it in any way interfere with or impair any of the rights and duties of the Federal agencies."

The case of *Graves et al vs. Phelps*, (1939) 257 App. Div. 889, 12 N. Y. S. (2d) 76, holds it to be the duty of the person making or effectuating a sale or transfer of stock to affix or cancel the stamps.

The case of *Willis vs. Addoms et al*, Court of Appeals, July 11, 1935, 268 N. Y. 160, 197 N. E. 180, affirming *Wylie vs. Adams*, 278 N. Y. S. 100, holds that the failure to pay a stock transfer tax by the seller upon the sale of stock precludes an action to recover on a purchase money note.

More directly bearing upon the arguments advanced by the able counsel for the Farm Credit Administration, we point to decisions by the Supreme Court of the United States upholding state statutes designed to cause national banking corporations, being admitted Federal agencies, to collect and remit taxes levied upon the shareholders of said banks. *First National Bank v. Kentucky*, 9 Wall. 353, 19 L. Ed. 701; *Citizens National Bank v. Kentucky*, 217 U. S. 443, 54 L. Ed. 832, 30 S. Ct. 532; *First National Bank v. Chehalis County*, 166 U. S. 440, 41 L. Ed. 1069, 17 S. Ct. 629; *Merchants & M. Nat. Bank v. Pennsylvania*, 167 U. S. 461, 42 L. Ed. 236, 17 S. Ct. 829.

With reference to the contention that the instant tax measure places an unconstitutional tax or burden upon agencies or instrumentalities of the Federal Government, we think the case of *Colorado National Bank vs. Bedford*, 310 U. S. 41, 84 L. Ed. 1067, furnishes a complete answer. In upholding the constitutionality of a state law requiring national banking corporations to collect and remit to the state, a tax levied upon customers of the bank, based upon the value of safety deposit box services, the Supreme Court said:

"The person liable for the tax, primarily, cannot always be said to be the real taxpayer. The taxpayer is the person ultimately liable for the tax

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itself. The funds which were received by the State came from the assets of the user, not from those of the federal instrumentality, the bank. The Colorado Supreme Court holds the user is the taxpayer. The determination of the state court as to the incidence of the tax has great weight with us and, when it follows logically the language of the Act, as here, is controlling. As the user directly furnishes the funds for the tax, not as an ultimate consumer with a transferred burden but by § 12 of the Act is the responsible obligor, we conclude the tax is upon him not upon the bank. The Constitution or laws of the United States do not forbid such a tax.

"The tax being a permissible tax on customers of the bank, it is settled by our prior decisions that the statutory provisions requiring collection and remission of the taxes do not impose an unconstitutional burden on a federal instrumentality. * * *

Upon these considerations and authorities we accordingly advise you that the seller or transferor of the shares or certificates of stock of the corporations and associations named in your letter, is liable for the excise or privilege tax levied by the Texas Stock Transfer Law, regardless of the status of such corporations or associations as Federal agencies or instrumentalities, a question which we find unnecessary to here pass upon.

Yours very truly

ATTORNEY GENERAL OF TEXAS

RECEIVED APR 24 1948
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