



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. 0-4694  
Re: Whether the ownership of majority of stock in one corporation by same persons who control majority of stock in another corporation by virtue of ownership and by trust agreement constitute such corporations a single chain under Article 1111d, V. P. C., and a related question.

Your letter of June 30, 1942, together with supplements thereto and file submitted therewith presents two questions for the opinion of this department. We take the liberty of re-stating your questions as follows:

1. Where corporation A, the majority of whose stock is owned by X and Y, operates stores which are subject to the Chain Store Tax, and corporation B, in which X owns 37% of the stock, and in which Y controls 38% of the stock as trustee under an irrevocable trust, also operates stores subject to the chain store tax law, are the stores of the two corporations subject to the tax as a single chain?

2. Where X owns two stores, and corporation A and corporation B each own one store subject to the chain store tax, and X has control of both A and B corporations by virtue of a power of attorney to control the majority of the stock in each corporation, should the four stores be taxed as a single chain?

In our Opinion No. 0-2764, we held that where the same group of persons who controlled the stores of a partnership also, by majority stock ownership, controlled the stores

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of a corporation, the stores of the partnership and those of the corporation are taxable as a single chain. We predicated that opinion upon the holding of the court in the case of *H. E. Butt Grocery Co. v. State*, 137 S. W. (2d) 823 (writ of error refused). The holding in that case has been re-affirmed in the case of *Safeway Stores, Inc. v. State*, 158 S. W. (2d) 319 (writ of error refused), and in *Central Power & Light Co. v. State*, not yet reported.

Section 6 of Article llll-d, V. P. C., the Chain Store Tax Law, reads as follows:

"The provisions of this Act shall be construed to apply to every person, agent, receiver, trustee, firm, corporation, copartnership or association, either domestic or foreign, which is controlled or held with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management."

With reference to this section the court in the Butt case, *supra*, said:

"Sec. 6 was manifestly intended to prevent large chains of stores, which receive the benefits from such system . . ., from circumventing the tax burdens imposed under the Act, by organizing separate corporations to operate them, the capital stock of which, or a majority of it, being owned by a parent corporation or holding company, or by an individual or association of individuals. Thus through a common management or control over a number of individual units or corporations the clear purpose of the law would be defeated."

While, in neither of the two fact situations presented by you, does the same individual or group of individuals own the majority interest in two corporations, yet in each of such fact situations the same individuals have the ultimate control and management of all the stores involved. On the one hand two individuals own a majority of the stock in one corporation, and the same two individuals control the majority of stock in the other by virtue of ownership of one and an irrevocable trust in which the other is trustee with absolute

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power to manage and control the stock as trustee. On the other hand one individual is sole owner of two stores and controls two other stores by virtue of a power of attorney giving him such authority. There is no difference in principle, in either of these cases, from the Butt case. The control and management in each case, is just as effective, and just as unequivocal as if the control were accomplished by means of majority stock ownership, and we think it is just as effectively covered by the statute. It follows that, in each of the fact situations presented by you the stores are taxable as a single chain and that each of your questions must be answered in the affirmative.

Trusting that we have fully answered your inquiry,  
we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Fowler Roberts*  
Fowler Roberts  
Assistant

FR:db

APPROVED NOV 23, 1942

*Gerald C. Mann*

ATTORNEY GENERAL OF TEXAS

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