



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

September 12, 1947

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

Opinion No. V-373

Re: Whether LO covered
hopper cars belong-
ing to Halliburton
Oil Well Cementing
Co. are subject to
ad valorem taxes
and if so, the tax-
able situs under
facts stated

Dear Mr. Sheppard:

You request our opinion in reference to the above captioned matter, based upon the facts as outlined in letters to you from Halliburton Oil Well-Cementing Company, which facts are as follows:

"The Halliburton Oil Well Cementing Company is primarily engaged in the servicing of oil and gas wells and in connection, therewith, sells some oil field supplies. One of the items which we sell is cement. This Company has recently purchased several LO covered hopper cars which are specifically designed to haul dry bulk cement over or on railroad tracks. The cars are hauled on the railroad tracks by the railroad companies and the railroad companies pay us on a mileage basis for the use of the cars. The cars which we own are used exclusively to haul cement for us.

". . ."

"At the present time, this Company assigns railroad cards to a certain location in much the same manner as we assign our trucks. As an example, we have a bulk cement storage plant at Hawkins, Texas, and there are now two railroad cars assigned to that plant. By the end of the year, however,

there may be none or as many as five or six cars assigned to this plant depending upon the amount of business in that particular area. If the cement business increases at Hawkins, it is possible that one or more railroad cars which are now assigned to our Odessa plant may be transferred to Hawkins, and by the same token one or more of the cars now assigned to the Hawkins plant may be transferred to our Levelland plant in case the cement business increases at Levelland and decreases at Hawkins.

"We use these railroad cars as storage bins to a large extent. I do not believe that we have any railroad cars which are not in use unless, of course, they are in need of repair. Railroad cars which are stationed or headquartered at Hawkins are loaded with cement at Dallas, Ft. Worth, Houston, Ada, Oklahoma, and in the State of Arkansas. In the past it has been impossible to get enough cement at Dallas and Ft. Worth to supply our bulk cement plants in the Dallas and Ft. Worth area. Railroad cars assigned to our Odessa plant are loaded with cement at El Paso and San Antonio and at some locations in Kansas and Nebraska. As a matter of practice, the cement is purchased at the most convenient cement manufacturing plant if that plant can supply us.

"In case our business should fall off to such an extent that part of our railroad cars would become idle, I believe it would be safe to say that the idle cars would be kept at the location where they are assigned. I do not believe that they would be brought into our home office here at Duncan, unless circumstances change in the future.

"When you submit this question to the Attorney General, we shall appreciate it if you will advise him that we are required to pay mileage taxes in the States of Kansas, Oklahoma and New Mexico, on cars which travel through those states. These mileage taxes are in lieu of property taxes and apply to all

miles traveled regardless of the location to which the cars have been permanently or temporarily assigned. Property taxes are levied in the States of Arkansas, Colorado, Louisiana, Mississippi, etc., on a mileage basis and the permanent or temporary location of the car is not taken into consideration in arriving at the ad valorem tax. The miles traveled in those states as compared with the miles traveled everywhere is the ordinary basis used for arriving at the valuation upon which the ad valorem tax is levied. You will recall our letter of August 15 in which we stated that the cars which are assigned to our various locations or plants in Texas are used and travel in the States of Arkansas, Kansas, Oklahoma, Nebraska, Louisiana, New Mexico and Texas."

The common law maxim of "mobilia sequuntur personam" (movables follow the person), that is, that personal property has its legal situs for taxation purposes at the place of the owners domicile, is the general rule in Texas. Although the Constitution of Texas (Art. VIII, Sec. 11) provides that "all property, whether owned by persons or corporations shall be assessed for taxation, and taxes paid in the county where situated," it has been held by the Supreme Court of Texas that this provision is no more than a declaration of the common law rule in that "since it had reference to the taxing power, it evidently meant property where situated for the purposes of taxation under the general principles of law as then understood." *City of Fort Worth v. Southland Greyhound Lines*, 67 S. W. (2d) 361; *G. C. & S. F. Ry. Co. v. City of Dallas*, 16 S. W. (2d) 292; *Great Southern Life Ins. Co. v. City of Austin*, 243 S. W. 778; *City of Galveston v. Haden*, 214 S. W. 766; *Ferris v. Kimble*, 12 S.W. 689. This interpretation is said also to apply to Article 7153, Revised Civil Statutes of Texas, as amended, enacted pursuant to the above constitutional provision (See cases supra), which provides:

"All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the State or county, shall be listed and assessed in the county of the resi-

dence of the owner thereof, or in the county where the principal office of such owner is situated."

However, the principle that the taxable situs of personal property is at the residence of the owner is not without exceptions and it appears well settled that tangible personal property may acquire a situs for taxation elsewhere than the owner's domicile. *Galveston v. Haden*, supra, and 51 Am. Jur. Sec. 451, p. 466. It is said that the situs of tangible personal property depends on the character of its use, *G. C. & S. P. Ry. Co. v. City of Dallas*, supra, and that the test is whether or not the property is situated within the jurisdiction solely for use and profit there. 51 Am. Jur., Sec. 454, p. 469 and cases cited.

The principles governing the situs of personal property in connection with the State's power of taxation apply generally to the situs of such property for the purposes of local taxation 40 Tex. Jur., Sec. 22, p. 38; and clearly property in transit or only temporarily in a jurisdiction other than that of the owner's domicile does not acquire taxable situs in such jurisdiction *Fort Worth v. Southland Lines*, supra; *Ferris v. Kibble*, supra; 51 Am. Jur., Sec. 455, p. 469. Delays in transit, however, may create taxable situs in a jurisdiction through which the property passes; and such result depends on the nature and duration of the delay 51 Am. Jur., Sec. 455, supra; *Anno. 116 A.L.R.*, 724.

In Attorney General's Opinion No. 0-5632 it was held that trucks operated exclusively in Nueces County acquired a business situs therein, and were subject to ad valorem taxes imposed by Nueces County although the owner's domicile was elsewhere. Also, in Attorney General's Opinion No. 0-3702 it was held that where road building equipment was situated in a county other than that of the residence of the owner on a permanent basis in relation to the taxing year in question, it was taxable in the county where actually situated.

The fact that the cars in question travel in interstate commerce while going to and from a cement plant and that while so traveling in the States of Arkansas, Colorado, Mississippi and other States property taxes are levied against them on a mileage basis does not affect their taxability in Texas. It has long been settled by the

U. S. Supreme Court that property having its situs within the taxing States is not exempt from a nondiscriminatory property tax merely because the property is used in interstate commerce. *Virginia v. Imperial Coal Sales Co., Inc.*, 293 U. S. 15, 55 Sup. Ct. 12. The Supreme Court of the United States in *First Bank Stock Corp. v. State of Minnesota*, 301 U. S. 234, 57 S. Ct. 677, held that property owned by a Delaware corporation doing business in Minnesota, said property being located and used in Minnesota in connection with the corporation's business activities, acquired a "commercial domicile" and taxable situs in Minnesota. The court further held it was immaterial that such property was also subject to taxation in another State.

Based upon the facts given us, it seems clear, under the authorities cited, that the cars in question are subject to ad valorem taxation in Texas, and that they have a business situs for taxation purposes in the county to which they are assigned. It appears that these cars were "recently purchased" by Halliburton Company. Of course if they were not owned by Halliburton and located in Texas on last January 1st there would be no taxes due thereon for this year. The county to which the cars may be assigned and located on January 1, 1948, determines their taxable situs for next year. The fact that the car or cars may be temporarily out of the county of its situs on January 1st for refilling or other purposes would not effect either its taxability or taxable situs.

SUMMARY

10 covered hopper railroad cars owned by Halliburton Oil Well Cementing Co., and assigned to various counties in Texas and there used as storage bins for cement, under the facts stated, are subject to ad valorem taxation in Texas; and the taxable situs of each car is in the county to which it is assigned. Art. 7153 V.C.S.; *City of Ft. Worth v. Southland Greyhound Lines*, 67 S. W.

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(2d) 361; Virginia v. Imperial Coal Sales Co.,
Inc., 293 U. S. 15; First Bank Stock Corp., v.
State of Minn., 301 U. S. 234.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By



W. V. Geppert
Assistant

WVG/mmc/lh

APPROVED



ATTORNEY GENERAL