



**THE ATTORNEY GENERAL  
OF TEXAS  
AUSTIN, TEXAS**

**PRICE DANIEL**  
ATTORNEY GENERAL

**FAGAN DICKSON**  
FIRST ASSISTANT

August 5, 1948

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

Opinion No. V-648

Re: Taxable status of certain  
types of stock transfers  
to and from "custodians."

Dear Mr. Sheppard:

You request our opinion as to whether the stock transfer tax levied under Article 15 of H. B. No. 8, 47th Legislature, as amended by S. B. 141, 50th Legislature, would accrue in the following types of transfers:

- "1. From the name of an owner to the name of a nominee of a custodian.
- "2. From the name of a nominee of a custodian back to the name of the owner for whom the nominee had held the shares.
- "3. From the name of one nominee of a custodian to the name of another nominee of the same custodian.
- "4. From the name of a nominee of a custodian to the name of a nominee of a new custodian for the same owner."

The Texas Stock Transfer Tax Act is codified as Article 7047m and reads, in part, as follows:

"Section 1. 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 is not intended by this Article to impose a tax upon an agreement evidencing the deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon such certificates so deposited, nor upon transfers of such certificates to the lender or to a nominee of the lender or from one nominee of the lender to another, provided the same continue to be held by such lender or nominee or nominees as collateral security as aforesaid; nor upon the retransfer of such certificates to the borrower; nor upon transfers of certificates from a fiduciary to a nominee of such fiduciary, or from one nominee of such fiduciary to another, provided the same continue to be held by such nominee or nominees for the same purpose for which they would be held if retained by such fiduciary, or from the nominee to such fiduciary; nor upon mere loans of stock or certificates, or the return thereof; nor upon deliveries or transfers to a broker for sale; nor upon deliveries or transfer by a broker to a customer for whom and upon whose order he has purchased the same, but transfers to the lender, or to a nominee or nominees as aforesaid, or retransfers to the borrower or fiduciary; and deliveries or transfers to a broker for sale, or by a broker to a customer for whom and upon whose order he has purchased the same shall be accompanied by a certificate setting forth the fact; nor upon transfers or deliveries made pursuant to an order of the Federal Securities and Exchange Commission which specifies and itemizes the securities ordered by it to be delivered or transferred (provided that this exemption shall not apply to such transfers or deliveries made before the passage of this Act); nor upon record transfers following such

transfers or deliveries; nor in respect to shares or certificates of stock or certificates of rights to stocks, or certificates of deposit representing certificates of the character taxed by this Article, in any domestic association, company, or corporation, if neither the sale, nor the order for, nor agreement to buy, nor the agreement to sell, nor the memorandum of sale, nor the delivery is made in this state and when no act necessary to effect the sale or transfer is done in this state. . . ."

Construing the entire act as a whole, it seems clear to us that a tax is not imposed upon a transfer which does not involve a change of title or ownership, either legal or equitable. This taxing act is similar to the stock transfer tax acts of New York and Pennsylvania. Both the New York and Pennsylvania acts have been construed to impose a tax only on those transfers which involve a change of title, either legal or equitable. In prior Opinion No. 0-3765 of this office we held:

"We therefore submit that a taxable transaction or eventuality is created, under the Stock Transfer Tax Act, by either a 'sale, agreement to sell, delivery or transfer upon the books and records, of shares or certificates of stock, or certificates for rights to stock, or certificates of deposit representing an interest in stock, whether vesting in the transferee merely the legal title, or merely the equitable title or beneficial interest, or, as in the usual instance, both the legal and equitable right, title and interest."

"A 'nominee' is synonymous with an agent . . . and is one who represents and acts for his principal."  
B. F. Avery & Sons Co. v. Glenn, 16 F. Supp. 544.

It is therefore our opinion, if neither the legal nor equitable title is transferred in the four types of transfers inquired about by you, and the transferee in each instance continues to hold the shares or certificates for the same purpose for which they were held by the transferor, that such transfers are not taxable.

#### SUMMARY

A transfer of shares or certificates from the name of an owner to the name of a custodian, or from the name of an owner to the name of a nominee of a custodian, or from the name of a nominee

of a custodian back to the name of the owner for whom the nominee had held the shares, or from the name of one nominee of a custodian to the name of another nominee of the same custodian, or from the name of a nominee of a custodian to the name of a nominee of a new custodian for the same owner is not taxable under the Texas Stock Transfer Tax Act, if neither the legal nor equitable title is transferred and the transferee in each instance continues to hold the shares or certificates for the same purpose for which they were held by the transferor.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

*W. V. Geppert*

W. V. Geppert  
Assistant

WVG/JCP

APPROVED

*Fagan Dickson*  
FIRST ASSISTANT  
ATTORNEY GENERAL