



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**PRICE DANIEL  
ATTORNEY GENERAL**

October 11, 1948

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

Opinion No. V-697

Re: Basis for computation of  
occupation tax on produc-  
tion of carbon black pro-  
duced by Witco Hydrocar-  
bon Corporation under con-  
tract with Witco Chemical  
Company.

Dear Mr. Sheppard:

Your letter request reads as follows:

"I am attaching herewith copy of contract between Witco Hydrocarbon Corporation, a corporation of the State of Delaware and Witco Chemical Company, a corporation of the State of Illinois.

"In view of your Opinion #V-616 please advise me if Witco Hydrocarbon Corporation would be authorized to deduct the  $7\frac{1}{2}\%$  allowed Witco Chemical Company in arriving at the sales price before computing the tax levied under Section 46 of Article 7047, R. C. S."

We have carefully examined the copy of the enclosed agreement between the parties. This agreement on its face is a sales agreement. It purports to sell the carbon black and pass the title to the purchaser. It provides that the sales price shall be determined by the amount received by the purchaser. That is, the purchaser shall pay the seller "a sum equal to the net price f. o. b. works at which carbon black is sold by Witco (the purchaser) less  $7\frac{1}{2}\%$  thereof." Although this method of arriving at the sales price is unusual, the parties may lawfully enter into such a method.

Article 7047(46), V.C.S., provides that the occupation tax shall be paid on a certain percentage of the market value of the carbon black produced or manufactured. It defines "market value" as follows:

"The market value of a particular type or grade of carbon black shall be the average sales price of that type or grade of all bona fide sales made during the month on which the tax is being paid less the cost of packing, freight and cartage." (Emphasis added)

We have no way of determining whether or not under the contract in question a "bona fide sale" has been made. This is a fact issue to be determined by your department. If you find that a "bona fide sale" has been made, then the tax is to be computed on the net price f. o. b. works at which the carbon black is sold by Witco Chemical Company, less  $7\frac{1}{2}\%$  thereof, and less cost of packing, freight and cartage. If such sale is not "bona fide," but merely entered into as a subterfuge to evade full payment of the tax, then the tax should be computed on the net price f. o. b. works at which the black is sold by Witco Chemical Company, less packing, freight and cartage.

SUMMARY

The submitted contract between Witco Hydrocarbon Corporation and Witco Chemical Company on its face is a sales agreement. If this is a "bona fide" sales agreement, the occupation tax on the carbon black produced and sold under such agreement should be computed on the net price f. o. b. works at which the carbon black is sold by Witco Chemical Company, less  $7\frac{1}{2}\%$  thereof and less the packing, freight and cartage. If this sales agreement is not "bona fide," but merely entered into as a subterfuge to evade full payment of the tax, then the tax should be computed on the net price f. o. b. works at which the carbon black is sold by Witco Chemical Company, less packing, freight and cartage. Art. 7047(46), V.C.S.

Yours very truly

APPROVED:

ATTORNEY GENERAL OF TEXAS

*Jagan Dickson*  
FIRST ASSISTANT  
ATTORNEY GENERAL

By *W. V. Geppert*  
W. V. Geppert  
Assistant

WVG/JCP