



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

November 15, 1996

The Honorable Tom Craddick
Chair, House Committee on Ways and Means
House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Letter Opinion No. 96-128

Re: Applicability of section 11.31(a), Tax Code, to a commercial injection well that is operated solely for the purpose of treating and disposing of waste generated by third parties (ID# 38908)

Dear Representative Craddick:

You have asked this office to interpret section 11.31(a) of the Tax Code. Specifically, you ask whether a commercial enterprise engaged solely in the business of treating, handling, and disposing of waste generated by third parties is entitled to the property tax exemption enacted by that section. In our view, based on the legislative history of section 11.31(a), such a commercial enterprise is not entitled to the exemption solely on the basis of the nature of its business.

Section 11.31(a) of the Tax Code provides:

A person is entitled to an exemption from taxation of all or part of real and personal property that the person owns and that is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. A person is not entitled to an exemption from taxation under this section solely on the basis that the person manufactures or produces a product or provides a service that prevents, monitors, controls, or reduces air, water, or land pollution.

A consideration of the legislative history of this provision demonstrates that it was not intended to give tax relief to those who are primarily engaged in the commercial business of pollution control or abatement, but rather was intended to give such relief to businesses compelled by law to install or acquire pollution control equipment which generates no revenue for such businesses.

Moreover, the language of article VIII, section 1-1 of the Texas Constitution, upon the approval of which by the people the effectiveness of section 11.31(a) was contingent, is to the same effect. Article VIII, section 1-1, proposed by House Joint Resolution 86 of the Seventy-third Legislature, permits the exemption from ad valorem taxation of real or personal property "used, constructed, acquired or installed wholly or partly to meet or

exceed" environmental pollution rules "adopted by any environmental protection agency of the United States, this state, or a political subdivision of this state."

As originally presented as part of House Bill 1920, in the Seventy-third Legislature's regular session in 1993, section 11.31(a) contained only what is now its first sentence. The hearings on H.B. 1920 and H.J.R. 86 before the House Ways and Means Committee, as well as the House Research Organization's bill analysis, make plain that the purpose of the legislation is to insure that businesses required by law to install pollution control equipment which generates no additional profit for them are not taxed on such property. H. P. Whitworth of the Texas Chemicals Council, testifying for the bill, said, "The [pollution control] equipment we are talking about today does not produce a penny of revenue. It's in there simply for the welfare as we see it of the general population. And anybody that adds it to his plant or his business cannot expect that investment to return him anything."¹ Similarly, the bill analysis, in its précis of supporting arguments for the bill, includes:

[I]t is impossible to predict what proportion of new pollution control equipment would be reflected in the tax rolls. Since this equipment does not add to the profitability of a plant, many appraisers currently do not add the cost of environmental devices to the tax value of a business. . . . It would be unfair to tax businesses on property they are required by law to purchase.² [Footnote added.]

Further evidence that it was to correct such perceived unfairness, rather than to provide relief to those engaged in the pollution control business, that the bill was introduced, is provided by the remarks of Representative Stiles, the sponsor, in response to the question of whether the section exempted automobile inspection stations:

No, sir, I think they are in the business to do, provide that service . . . but I would tell you that I would be glad to accept an amendment that somebody's in the business to make money with a service like that, that would not be applicable under this law.³ [Footnote added.]

To address such concerns as these, Representative Berlanga offered an amendment which is now substantially the second sentence of section 11.31(a), save for the clause "or provides a service." In introducing this language, Representative Berlanga said, "This

¹Hearings on H.B. 1920 & H.J.R. 86 Before the House Ways and Means Comm., 73d Leg. (March 24, 1993) (tape available from House/Video Services Office).

²House Research Organization, Bill Analysis, H.B. 1920, 73d Leg. (1993).

³Hearings on H.B. 1920 & H.J.R. 86 Before the House Ways and Means Comm., *supra* note 1.

amendment clarifies that a person cannot get the exemption just because the person manufactures a product that is used for pollution control purposes.”⁴

The language “or provides a service” was added to section 11.31(a) in the senate for the same reason. Senator Whitmire, in the public hearing on the bill held by the Intergovernmental Relations Committee, asked, “What if their entire plant has to do with pollution control such as landfill or more specifically a hazardous waste incinerator . . . are they going to be exempt?”⁵ The senate sponsor, Senator Armbrister, asked Bill Allaway of the Texas Association of Taxpayers to respond. Mr. Allaway said:

I don't believe [the] entire facility would be exempt. What is exempt is land, processes or facilities which are used to meet or exceed a requirement of federal government. The business itself would not be exempt. The property that is covered by the bill is property that prevents that business from pollution--not the property that they use to conduct business.⁶ [Footnote added.]

In introducing the language “or provides a service” on the senate floor, Senator Armbrister once again underlined that the statute is not intended as tax relief for persons engaged for profit in the pollution control business:

What this device does is only if you have a pollution control device that is drafting off any emissions of the landfill, that device only, not the entire landfill or incinerator would get an exemption . . . only the device used to pull off a by-product of that device would be.⁷ [Footnote added.]

The plain language of the second sentence of section 11.31(a), as well as the legislative history of the section as a whole, demonstrates clearly that the purpose of the statute is tax relief for businesses required by law to use or possess pollution control devices or equipment. The statute was not intended to provide a tax exemption to businesses which are engaged for profit in the commercial trade of pollution control or abatement. Accordingly, while a device employed by a business to reduce environmental pollution as mandated by law is exempted from property tax by the statute, a business

⁴Debate on H.B. 1920, on the Floor of the House, 73d Leg. (April 20, 1993) (tape available from House Video/Audio Services Office).

⁵Hearings on H.B. 1920 & H.J.R. 86 Before the Senate Comm. on Intergovernmental Relations, 73d Leg., (April 28, 1993) (tape available from Senate Staff Services Office).

⁶*Id.*

⁷Debate on H.B. 1920 on the Floor of the Senate, 73d Leg. (April 30, 1993) (tape available from Senate Staff Services Office).

engaged, as you put it, in “treating, handling, and disposing of waste generated by third parties” for which such third parties are charged a fee, is not entitled on that basis to an exemption under section 11.31(a) of the Tax Code.

S U M M A R Y

A business engaged in treating, handling, and disposing of waste generated by third parties, for which it charges such third parties a fee, is not entitled on that basis to an exemption from property taxes under section 11.31(a) of the Tax Code.

Yours very truly,

A handwritten signature in black ink, reading "James E. Tourtelott". The signature is written in a cursive style with a long horizontal line extending to the right.

James E. Tourtelott
Assistant Attorney General
Opinion Committee