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PIPE LINE COMPANY IS A PUBLIC UTILITY AND SHOULD BE TAXED AS SUCH, EVEN IF A SUBSIDIARY OF ANOTHER COMPANY—§§5727.01, 5727.02, R.C.

SYLLABUS:

A pipe line company whose sole business is the transporting of crude oil to another company whose primary business consists of producing, refining, or marketing petroleum or its products, does not come within the exception of Section 5727.02, Revised Code, is a "public utility" under Section 5727.01, Revised Code, and should be taxed as a "public utility"; and this is so even if said pipe line company is a wholly owned subsidiary of the other company.

Columbus, Ohio, August 24, 1961

Hon. Stanley J. Bowers, Tax Commissioner
Department of Taxation, Columbus 15, Ohio

Dear Sir:

I have before me your letter which reads as follows:

"In the administration of the public utility property and excise taxes provided in Chapter 5727 of the Revised Code, a question has arisen with regard to which your opinion is respectfully requested.

"In recent years a number of integrated oil companies, engaged in the production, transportation, refining and marketing of petroleum or its products, have adopted the practice of separately incorporating certain phases or operations of their business,

such as pipeline operations, which heretofore had been divisional or departmental operations of the business entity.

“Of course, such pipeline operations, while operated as a division or a department of the corporate entity, whose primary business was that of producing, refining or marketing petroleum or its products, were excluded from public utility taxation under the provisions of Section 5727.02 of the Revised Code. The question arises, however, as to whether the exclusion provided in the aforementioned section of the Revised Code applies when pipeline operations are separately incorporated and operated as a wholly owned subsidiary of the parent petroleum company.

“Specifically then, your opinion is requested in regard to the following question:

“Is a separately incorporated pipeline company, transporting ‘crude’ oil only within this state, to be considered as a public utility, and taxed as such, under the provisions of Chapter 5727 of the Revised Code, when such pipeline company is a wholly owned subsidiary of a parent corporation whose primary business in this state consists of producing, refining or marketing petroleum or its products, and when said pipeline company serves only the parent corporation?”

“In your consideration of this question we trust that you will advise us if additional factual information is desired.”

Section 5727.01, Revised Code, provides in pertinent part:

“As used in sections 5727.01 to 5727.62, inclusive, of the Revised Code:

“(A) ‘Public utility’ includes each corporation, firm, individual, and association, its lessees, trustees, or receivers elected or appointed by any authority, and referred to as an express company, telephone company, telegraph company, sleeping car company, freight line company, equipment company, electric light company, gas company, natural gas company, *pipe line company*, water works company, messenger company, union depot company, water transportation company, heating company, cooling company, street railroad company, or railroad company. Public utility includes any plant or property owned or operated by any such company, corporation, firm, individual, or association.

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“(E) Any person, firm, partnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated:

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“(10) *Is a pipe line company when engaged in the business of transporting natural gas, oil or coal or its derivatives through pipes or tubing, either wholly or partially within this state;*

“* * *

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(Emphasis added)

It is quite apparent that under the foregoing provisions of Section 5727.01, *supra*, a corporation operating a pipe line for the transportation of crude oil must be considered as embraced within the term of a public utility. Thus, the question is presented whether or not a corporation such as in the instant case constitutes an exception under Section 5727.02, Revised Code, which reads :

“As used in sections 5727.01 to 5727.62, inclusive, of the Revised Code, ‘public utility,’ ‘electric light company,’ ‘gas company,’ ‘natural gas company,’ ‘*pipe line company*,’ ‘water works company,’ ‘water transportation company,’ ‘heating company,’ or ‘cooling company’ does not include any person, firm, partnership, voluntary association, joint-stock association, company or corporation, wherever organized or incorporated, which is engaged in some other primary business to which the supplying of electricity, power, heat, artificial gas, natural gas, water, water transportation, steam, or air to others is incidental, or which supplies electricity, power, heat, gas, water, water transportation, steam, or air to its tenants, whether for a separate charge or otherwise, or *whose primary business in this state consists of producing, refining, or marketing petroleum or its products.*”

(Emphasis added)

It is quite plain, I think, that there is nothing in Section 5727.02, *supra*, when read as it stands, which would justify the conclusion that a pipe line company operating under the facts here under review comes within the exception of such section. Under the section, a company whose main business in this state is the production, refining, or marketing of petroleum or its products, may freely operate a pipe line incident to its main business, and when it does operate such pipe line, it will not be considered a public utility and taxed as such. Many forms under which such operations may be carried out are mentioned, but it is to be noted that reference to them is consistently in the singular and never in the plural. There is no hint, by implication or otherwise, of more than one integrated activity, whether operated by a person, firm, partnership, voluntary association, joint-stock association, company, or corporation. Nothing is said about subsidiary, holding, parent, or any other type of

corporations which are used, for a multiplicity of reasons, to divide and subdivide the operations of mammoth corporations of the modern era. It would accordingly appear that a company whose only business is the transportation of crude oil by pipe line, is a public utility under Section 5727.01 (E) (10), *supra*, and therefore subject to the provisions of Chapter 5727., Revised Code, as regards taxation.

The conclusion just mentioned finds ample support in the decisions of the federal courts. For example, in *Meischke - Smith v. Wardell*, 286 F. 775 (affirmed, 263 U.S. 699) where the subject of the controversy was the imposition of a federal tax, the first paragraph of the syllabus reads :

“Where all of the stock of a pipe line corporation was owned by the corporation for whom the oil was transported, the officers of the two companies were the same to a large extent, and the accounts of the pipe line company were kept in the office of the holding corporation, though its field force was separate, and it had a separate bank account, the two corporations were distinct, so that the pipe line company was liable for the war tax imposed by War Revenue Act Oct. 3, 1917, Section 500, Subd. (d), on the amount paid for the transportation of oil by pipe line.”

Also, the principal question here involved was stated in *Alexander v. Cosden Pipe Line Co.*, 63 F. (2d), 663, in the first paragraph of the syllabus :

“Corporation is generally considered legal entity distinct from stock holders, and holding company and subsidiary are separate entities.”

Specifically answering your question, it is my opinion and you are advised that a pipe line company whose sole business is the transporting of crude oil to another company whose primary business consists of producing, refining, or marketing petroleum or its products, does not come within the exception of Section 5727.02, Revised Code, is a “public utility” under Section 5727.01, Revised Code, and should be taxed as a “public utility”; and this is so even if said pipe line company is a wholly owned subsidiary of the other company.

Respectfully,
MARK McELROY
Attorney General