



Mr. Neilon M. Jennings

April 16, 1980

Mr. Robert D. Milam

Taxability of Gas in Storage

You asked Glenn Rigby for an opinion whether gas in storage was taxable as real property or became exempt as inventory (personal property). Glenn asked that I respond to your inquiry. The question was raised by Mr. Bennett who evidently suggests that gas extracted from its natural state and stored in underground storage does not lose its qualities as real property.

To begin the analysis of this question, we must look to the definition of real property in Section 104 of the Revenue and Taxation Code. Subdivision (b) of Section 104 includes, in the definition, "all mines, minerals, and quarries in the land" There is no doubt that unextracted gas in its natural state meets this definition, but the question Mr. Bennett is raising is whether the term "minerals . . . in the land" applies to extracted gas in underground storage. The case of Atlantic Oil Co. v. County of Los Angeles (1968) 69 Cal. 2d 585 at 595, states that the term "in the land" applies only to gas in its natural state before it is reduced to possession. California has adopted the theory that the owner of the land does not have absolute title to oil and gas in place but only the right to drill for such minerals. Callahan v. Martin (1935) 3 Cal. 2d 110. This is significant because the court in Atlantic Oil found that this was the basis of the definition of real property in Section 104. Once the gas is reduced to possession, it is no longer real property no matter where it is stored. As long as it is in the actual possession of the owner, it is personal property.

This view of the law is reflected in Property Tax Rule 121 which, in its definition of land, includes only "unextracted" mineral products. Once extracted and reduced to possession, it can no longer be land or real property. In our opinion, gas in storage is personal property and becomes subject to the business inventory exemption if held for sale or lease in the ordinary course of business.

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