



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN

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ATTORNEY GENERAL

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

Dear Sir:

Opinion No. 0-1237

Re: Whether under given facts situation  
twenty per cent prize tax is due under  
Article 7047f, R. C. S.

We are in receipt of your letter of August 4, 1939, wherein you outline three fact situations, as follows:

1. The owner of a place of business displays a jar of beans in his store and people entering such place of business are invited to guess at the number of beans in the jar. Anyone is eligible to participate in the guessing contest, and the one who guesses closest to the number of beans in the jar will receive the prize which is given away in connection with the contest whether he is or has been a customer of the store or not.
2. The owner of a store has printed duplicate numbered tickets and people who enter the store are given one of such tickets. He drops one number in a container and retains the other. Later a drawing is held and the person holding the number which corresponds to that drawn from the container receives the award. No charge is made for the ticket, and anyone entering may participate and receive the award whether he is or ever has been a customer of the store. A person may not receive the award unless he is in the store at the time of the drawing.
3. The proprietor of a motion picture theatre keeps a ledger in which anyone may sign his name without cost to him and regardless of whether he purchases or ever has purchased a ticket from the theatre. On each Thursday the drawing takes place and the theatre is closed and not in operation and is open to all alike, to which drawing there is no admission charge. A person may be present at the theatre at the time of the drawing and if his name is the one drawn then he will receive the prize, or any person whose name has been signed may go by the office of the theatre at any time Thursday and request that he be represented at the drawing, in which event

he is listed as being eligible for the prize and in such event if his name is drawn, he will receive the prize whether he is present or not. If the person whose name is drawn is not present or has not been so listed as being eligible for the prize then the drawing is carried over to the next week and so continues until the name of some person present or eligible is drawn.

You request our opinion as to whether the twenty per cent gift or prize tax levied by Article 7047f, Revised Civil Statutes, is due upon the prizes given away under the above three fact situations. Said Article 7047f reads, in part as follows:

"(a) Every person, firm, or corporation conducting a theatre, place of amusement, or any business enterprise in connection with the operation of which a prize in the form of money or something of value is offered or given to one or more patrons of such theatre, place of amusement, or business enterprise, and not given to all patrons thereof paying the same charge for any certain service, commodity, or entertainment, shall make a verified monthly report on the twenty-fifth day of each month to the Comptroller of Public Accounts of the State of Texas, showing the amount of money so given in prizes, and the value of all prizes or awards so given in connection with such business during the next preceding month.

"(b) There is hereby levied a tax equal to twenty per cent (20%) of the value of all such money, prizes, and awards given in connection with the operation of each and all of the foregoing business enterprises, and at the time of making the report to the Comptroller of Public Accounts, the owner or operator of any such business shall pay to the State Treasurer such tax upon the total amount of money, prizes, and awards so given during the next preceding month.\* \* \*"

That part of the statute requiring that the prize be offered or given away in connection with the operation of a theatre, place of business, or business enterprise is satisfied in each of the above cases. However, the giving of the prize in connection with the operation of a theatre, place of amusement, or business enterprise alone is not sufficient to mature the tax. If such had been the intention of the Legislature more apt words could have been used. For the tax to be due the prize must be offered or given to one or more patrons of such theatre, place of amusement, or business enterprise and not given to all patrons thereof paying the same charge for the commodity or entertainment. As used in this statute, we think the word patron is used in the same sense as customer. We do not believe that mere entrance into the bean guessing contest or acceptance of a ticket and dropping one end of it into a container and attending the drawing, or registering at the theatre and attending the drawing or taking the precaution to

be listed as being eligible for the prize in the manner provided would constitute one a patron or customer of the store or theatre. If the statute had so intended it is submitted that the same result would have been accomplished by simply levying the tax upon the giving of the prize in connection with the operation of the place of business without mentioning patrons of such business enterprise or theatre.

In case of doubt tax statutes must be construed most strongly against the government and in favor of the citizen. State v. San Patricio Canning Co., 17 S.W. (2d) 160; Yellow Cab Co. v. Pengilly, 11 S. (2d) 560.

Our answer to your question is that under the facts submitted to us the tax in question is not due under any of the fact situations set out above. In this connection we understand that the prizes are offered and given to non-patrons as well as patrons, and that no practices are engaged in such as would hamper or embarrass the non-customer who is participating in the enterprise in an effort to receive the gift.

Yours very truly

APPROVED AUG. 11, 1939  
GERALD C. MANN  
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By  
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