



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Neil J. Gilligan
County Auditor
Uvalde County
Uvalde, Texas

Dear Sir:

Opinion No. O-1756
Re: May taxes paid under mistake
of fact be refunded.

We have your letter of December 1, 1939, which
reads as follows:

"The following situation has arisen in
this county: A man rendered 134 acres of land
for taxation for a number of years to the
State and County; he has now discovered that
he does not own the land and that in fact the
land does not exist, in other words, that he
was rendering land under the mistaken belief
that he owned it.

"Under the above facts I would like to
know if it is possible for the county and
state, or either of them, to refund the taxes
which the man has paid?"

The courts of Texas have consistently held, in
accordance with the general rule in other jurisdictions,
that taxes which have been voluntarily paid by mistake of
fact may not be recovered. We shall quote but a few of the
authorities announcing this rule of law.

26 Ruling Case Law at page 455:

"An action will not lie to recover back
taxes paid under a mistake of fact, as when an

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owner of property by mistake; pays the taxes of another, or when a taxpayer in one district voluntarily pays a tax for another district levied by mistake on his lands."

Stayton, Chief Justice, speaking for the Supreme Court of Texas in *County of Galveston vs. Galveston Gas Co.* (1889) 72 Tex. 590, at page 518, 10 S. W. 583:

"This action is for money had and received, and there can be no doubt that in order to maintain it it must appear that the tax was illegal and void and not merely irregular, that it was not voluntarily paid. . . ."
(Underscoring ours)

Critz, Justice, in the case of *Austin National Bank vs. Sheppard* (Com. of App. 1934), 123 Tex. 272, 71 S. W. (2d) 242, said:

"A person who voluntarily pays an illegal tax has no claim for its repayment. 26 R. C. L. 455; *City of Houston vs. Freeser*, 76 Tex. 365; *Galveston City Co. vs. City of Galveston*, 58 Tex. 486; *Gaar Scott & Co. vs. Shannon*, 115 S. W. 361, and authorities cited on page 364. This case was affirmed by the United States Supreme Court, 223 U. S. 468."

Whereas this rule might at first blush seem unnecessarily harsh, the sound reason and public policy behind it has been well stated by Cooley in the following passage quoted by Chief Justice Stayton in *City of Houston vs. Jacob Freeser*, 76 Tex. 365 at page 367:

"That a tax voluntarily paid cannot be recovered, though it had not the semblance of legality, is well settled; and as said by an elementary writer, 'every man is supposed to know the law, and if he voluntarily makes a payment which the law would not compel him to make, he cannot afterwards assign his ignorance of the law as the reason why the State should furnish him with legal remedies to recover it back. . . . Mistake of fact can scarcely exist in such a case except in connection with negligence, as the illegalities which render such a demand a nullity must appear from the records, and the tax payer is just as much bound to inform himself what

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the records show as are the public authorities. The rule of law is a rule of sound public policy also; it is a rule of quiet as well as of good faith, and precludes the courts being occupied in undoing the arrangements of parties which they have voluntarily made, and into which they have not been drawn by fraud or accident, or by any excusable ignorance of their legal rights and liabilities.' Cooley on Tax 809."

Applying the rule of law announced by the foregoing authorities to the situation presented in your letter, we are constrained to answer your question in the negative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Walter R. Koch*
Walter R. Koch
Assistant

WRK:CO

APPROVED DEC 9, 1939

George Mann

ATTORNEY GENERAL OF TEXAS

