



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

September 17, 1949

Hon. Robert S. Calvert  
Comptroller of Public Accounts  
Austin, Texas

Opinion No. V-906.

Re: Assignability of a credit in  
taxes paid on oil from tank  
bottoms under Article 7057a,  
V.C.S.

Dear Sir:

Your letter request in reference to the above captioned matter reads in part as follows:

"During the period from July, 1942, to December, 1946, Petrolite Corporation, Ltd. was producers (sic) of oil in the East Texas fields, and their source of production consisted of oil obtained from tank bottoms. During this period they paid into the State \$9,407.51. On February 5, 1947, the Comptroller notified Petrolite Corporation of the Stack Case (199 S.W.2d 701) and advised such corporation that they were due no more tax as the producer on oil obtained from tank bottoms.

"Petrolite Corporation filed no report of producing oil from any other source in Texas. Section 13 of Article 7057a, provides:

'(13). When it shall appear that a taxpayer to whom the provisions of this Act shall apply has erroneously paid more taxes than were due during any tax paying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid.'

Petrolite Corporation has been unable to take credit for the \$9,407.51 paid on tank bottoms because it is not at the present time a producer of oil.

"Petrolite Corporation has by an assignment, assigned the credit due it to Rock Hill Company of San Antonio, Texas, which company is a regular producer and would be authorized to a credit, should such company make erroneous tax payments. This Department is now confronted with the question as to whether we are authorized to allow Rock Hill Company to take credit on its current tax payments with the amount due Petrolite Corporation properly assigned to it.

"I shall thank you to advise this Department whether we are authorized to permit Rock Hill Oil Company, a producer, to take credit on its current tax payment of \$9,407.51, which amount has been assigned to it by Petrolite Corporation, Ltd."

Subsection 13 of Section 1, Article 7057a, V.C.S., provides:

"(13). When it shall appear that a taxpayer to whom the provisions of this Act shall apply has erroneously paid more taxes than were due during any tax paying period either on the account of a mistake of fact or law, it shall be the duty of the State Comptroller to credit the total amount of taxes due by such taxpayer for the current period with the total amount of taxes so erroneously paid."

The Comptroller of Public Accounts has only those powers which have been expressly delegated to him by the Legislature, and those implied powers which are necessary for him to carry out the powers expressly given.

You will note that subsection 13 above quoted authorizes the State Comptroller to credit the total amount of taxes due by the taxpayer for the current period with the total amount of taxes erroneously paid and in no wise provides that the Comptroller has the power or authority to give this credit to anyone else.

You further ask in your opinion request whether the credit might be allowed the Rock Hill Company on the theory that the Rock Hill Company and the Petrolite Corporation, Ltd. are one and the same corporation in that the stock ownership and the governing officers of the two corporations are sufficiently related so that the two corporations could be considered one and the same. It appears from the file submitted to us that the Petrolite Corporation and the Rock Hill Oil Company are two separate and distinct corporations. They are two separate legal entities. These corporations evidently recognize the fact that they are not one and the same or they would not have made the assignment in question.

Hon. Robert S. Calvert, Page 3 (V-906)

You are, therefore, advised that the State Comptroller does not have the authority to credit the Rock Hill Company with taxes erroneously paid by the Petrolite Corporation, Ltd. However, the Petrolite Corporation is not without a remedy, if in fact the taxes erroneously paid were not a voluntary payment but were paid under duress as set out in your request. It can file its claim for a refund with the next Legislature, which will have the authority under our Constitution and laws to make an appropriation in the amount so erroneously overpaid.

SUMMARY

The State Comptroller does not have the authority to credit the Rock Hill Oil Company with oil production (tankbottom) taxes erroneously paid by the Petrolite Corporation, Ltd., on an assignment of the credit due the Petrolite Corporation, Ltd. The Comptroller may credit only the taxpayer who made the overpayment, and not his assignee. Art. 7057a, Sec. 1, subsec. 13, V.C.S.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



W. V. Geppert  
Assistant

WVG/mwb

APPROVED



ATTORNEY GENERAL