



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 15, 1960

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-847

Re: Application of Art. 1.11,
Title 122A, R.C.S., to an
overpayment of taxes which
occurred prior to the
effective date of such
article.

Dear Mr. Calvert:

Recently you requested our opinion upon the interpretation of Art. 1.11, Title 122A, R.C.S., providing that where an overpayment of tax has occurred the taxpayer may elect to have the overpayment credited to his tax account with the State, in lieu of pursuing any other remedy. Specifically, you inquired whether or not this provision would be applicable to the full amount of overpayment of gross receipts taxes made by Industrial Gas Supply Corporation, Houston, Texas, during the period November, 1950, through December, 1959, or only applicable to the portion of taxes overpaid on and after September 1, 1959, the effective date of the Article (Sec. 8).

It is our opinion that the article may only operate upon that portion of tax overpaid on and after September 1, 1959.

In State v. Humble Oil & Refining Co., 141 Tex. 40, 169 S.W.2d 707 (1943), a parallel question was posed. There, Humble had overpaid the gross production tax on oil prior to May 30, 1935. The 44th Legislature enacted a tax credit provision, very similar to the one here involved, allowing an offset for overpayment of taxes, the provision becoming effective on May 30, 1935. Humble contended that it could credit its prior overpayment against taxes due for the month of January, 1936, while the State contended that the law could have no such retroactive effect. Judgment was for Humble in the trial court and was affirmed by the Court of Civil Appeals. In reversing both courts and rendering judgment for the State, the Supreme Court said

"After a very careful examination of the authorities, we have reached the conclusion that the above-quoted statute cannot be applied retrospec-

tively. It is the law of this State, and the law generally, that, in the absence of any special indication or reason, a statute will not be applied retrospectively, even when there is no constitutional impediment against it. Stated in another way, it is the rule that statutes will not be applied retrospectively unless it appears by fair implication from the language used that it was the intention of the Legislature to make it applicable to both past and future transactions. [Citing authorities] When we apply this rule to this statute, we find no words contained therein which indicate a legislative intent to apply its provisions to past transactions."

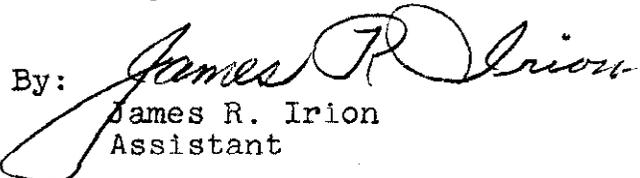
We believe that this holding forecloses any possibility of interpreting Art. 1.11 so as to allow credit in this case for overpayments occurring prior to September 1, 1959.

S U M M A R Y

Art. 1.11, Title 122A, R.C.S., providing that overpayments of taxes may be credited to the taxpayer with his consent in lieu of other remedies available, cannot apply to overpayments occurring prior to September 1, 1959, the effective date of the Act.

Yours very truly,

WILL WILSON
Attorney General of Texas

By: 
James R. Irion
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JRI:cm

APPROVED:

OPINION COMMITTEE:
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Fred B. Werkenthin
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REVIEWED FOR THE ATTORNEY GENERAL
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