



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

March 16, 1961

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

Opinion No. WW-1020

Re: Whether the Comptroller of Public Accounts has the authority to promulgate a certain rule and regulation to be used in ascertaining the taxable gallons of Special Fuels used for incidental highway travel.

Dear Mr. Calvert:

You have asked this Department for an opinion as to whether a proposed rule and regulation, a copy of which is hereto attached, can be legally promulgated by the Comptroller under authority vested in him by Article 10.21, Ch. 10, Title 122A, Vernon's Civil Statutes

This proposed rule or regulation provides for computing the amount of special fuels used on the highway and off of the highway in the same manner as is provided for motor fuels (gasoline) in Chapter 9, Title 122A, Article 9.13, V.C.S.

Article 10.08, V.C.S., provides a method for accounting for the tax on a mileage basis and reads as follows:

"In the event the tax herein imposed on special fuels imported into this State in the fuel supply tanks of motor vehicles and the tax on special fuels used in motor vehicles owned or operated by licensed suppliers or other persons acting as users can be more accurately determined on a mileage basis (that is by determining and using the total number of miles traveled and the total gallons of fuel consumed), or in case it is more practicable to so determine the tax, the Comptroller is hereby authorized to approve and adopt such basis."

Article 10.14, V.C.S., Section 1, reads, in part, as follows:

"(1) Except as otherwise provided by Article 10.15 of this Chapter, any licensed dealer who shall have paid the tax imposed

by this Chapter upon any liquefied gas or distillate fuel which has been used or sold for use by such dealer for any purpose other than propelling a motor vehicle upon the public highways of this State, or which has been sold to the United States Government for the exclusive use of said government, and any licensed user who shall have paid said tax upon any liquefied gas or distillate fuel which has been used by such user for any purpose other than propelling a motor vehicle upon said public highways, may file claim for a refund of the tax or taxes so paid,
. . . ."

Section 1 of Article 10.14, V.C.S., further provides that claims for refund shall be filed with the Comptroller on forms prescribed by the Comptroller and reads, in part, as follows:

". . . and shall show such other facts and information as the Comptroller may by rule and regulation require. . . ."

Article 10.21, Ch. 10, Title 122A, V.C.S., provides, in part, as follows:

"It is hereby made the duty of the Comptroller to collect, supervise, and enforce the collection of all taxes, penalties, interest and costs, due or that may become due under the provisions of this Chapter, and to that end the Comptroller is hereby vested with all of the power and authority conferred by this Chapter. The Comptroller shall also have the power and authority to promulgate rules and regulations, not inconsistent with this law or the Constitutions of this State or the United States, for the enforcement of the provisions of this Chapter and the collection of all taxes, penalties, interest and costs provided in this Chapter."

Chapter 9 of Title 122A, V.C.S., provides for taxes on motor fuels or gasoline as defined therein and Chapter 10 of Title 122A, V.C.S., provides for tax on special fuels, such as L.P. gas and diesel fuels which are defined in Chapter 10. Your request is as to whether or not you are authorized to promulgate a rule or regulation allowing the same method of computing the taxes due on special fuels as defined in

Chapter 10, as is authorized in the computing of taxes on gasoline as provided in Chapter 9 of Title 122A, V.C.S.

Chapter 10 does not provide any method making it mandatory to compute the tax in any particular manner but provides a method that may be used. Article 10.21, V.C.S., authorizes the Comptroller to make rules and regulations for the enforcement of the provisions of this Chapter and the collection of all taxes, penalties, interest and costs provided in this Chapter. Article 10.14, above set forth, also provides for the Comptroller making rules and regulations in connection with the computing of the taxes and refunds of special fuels.

It is the opinion of this Department that the Comptroller of Public Accounts has authority under Articles 10.14 and 10.21 of Chapter 10, Title 122A, V.C.S., to promulgate the rule and regulation, a copy of which is attached, for the computing of taxes levied by Chapter 10.

S U M M A R Y

The Comptroller of Public Accounts is authorized by Chapter 10, Title 122A, V.C.S, to promulgate a certain rule and regulation (copy attached) to be used in ascertaining the taxable gallons of special fuels used for incidental highway travel.

Yours very truly,

WILL WILSON
Attorney General of Texas

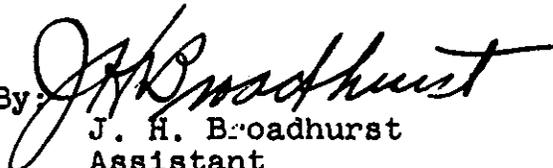
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APPROVED:

OPINION COMMITTEE:
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Grundy Williams
Joe Osborn
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