



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

June 17, 1969

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

Opinion No.M-418

Re: Construction of H.B.
1158, Acts of the 61st
Legislature amending
Section (9), Article 7.08,
Title 122A, Taxation-
General, relating to
payment for cigarette
stamps.

Dear Mr. Calvert:

You have requested our opinion concerning the effect of H.B. 1158 on the availability of money received in payment for cigarette stamps and meter settings during the month of August.

Section (9), Article 7.08, Title 122A, Taxation-General, as amended by H.B. 1158, provides in part as follows:

"The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. In each fiscal year, payment for stamps and meters received in August of that year shall be paid in full on or before August 31 no matter when purchased or received by the distributor during that month." (Emphasis added.)

In Muldrow v. Texas Frozen Foods, Inc., 157 Tex. 39, 299 S.W.2d 275 (1957), the Supreme Court of Texas held that taxes were not paid to the State until the tax money becomes available to the State.

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Section (9) of Article 7.08 requires in each fiscal year that payment for cigarette stamps and meter settings received in August of that year to be paid in full on or before August 31 regardless when purchased or received by the distributor during that month. These provisions are mandatory. In view of the holding in Muldrow v. Texas Frozen Foods, Inc., supra, money due the State must become available to the State during the fiscal year in which the cigarette tax stamps and meters are received by the distributor.

This mandatory provision was apparently provided by the Legislature for the reason that Section 49a of Article III of the Constitution of Texas provides:

"From and after January 1, 1945, no bill containing an appropriation shall be considered as passed or be sent to the Governor for consideration until and unless the Comptroller of Public Accounts endorses his certificate thereon showing that the amount appropriated is within the amount estimated to be available in the affected funds." (Emphasis added.)

Therefore, the provisions of Section (9) of Article 7.08 above quoted, requires all revenue to be available to the State during the fiscal year when cigarette tax stamps and meters are received by the distributor.

You are therefore advised that Section (9) of Article 7.08, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended by H.B. 1158, Acts of the 61st Legislature, 1969, requires that payment for cigarette tax stamps and meters received by the distributor during the month of August shall be paid in full to the State Treasurer before the end of the fiscal year.

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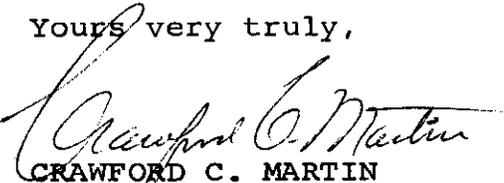
Article 1.13, Title 122A, Taxation-General, referred to in your request has no application to monies due under the provisions of Section (9) of Article 7.08 for the reason that Article 1.13 applies to reports and payments to be remitted to the Comptroller of Public Accounts, while Section (9) of Article 7.08 applies to monies to be paid to the State Treasurer.

Accordingly, all monies due for cigarette tax stamps and meters received by the distributor during August must be considered as revenue available to the State within the meaning of Section 49a of Article III of the Constitution of Texas during that fiscal year for the reason that such monies are required to be paid in full before the end of the fiscal year.

S U M M A R Y

Section (9) of Article 7.08, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended by House Bill 1158, Acts of the 61st Legislature, 1969, requires that payment for cigarette tax stamps and meters received during the month of August shall be paid in full before the end of the fiscal year and all monies due for cigarette tax stamps must be considered as revenue available to the State during the fiscal year.

Yours very truly,


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Prepared by John Reeves
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APPROVED:
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