



**THE ATTORNEY GENERAL  
OF TEXAS**

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**AUSTIN, TEXAS 78711**

August 21, 1969

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Building  
Austin, Texas 78711

Opinion No. M-451

Re: Whether a declaration by purchaser, under penalties of perjury, that the tax on all motor fuel which has been purchased on credit card and included in claim, has been paid, will support a claim for refund under Article 9.13(6), Motor Fuel Tax Law.

Dear Mr. Calvert:

You requested an opinion from this office and state the facts as follows:

"Purchases of motor fuel for use in aircraft are usually made by credit card, or in many instances by several credit cards covering different brands of motor fuel purchased, for which the refund dealers delivering the fuel can not issue receipts for the tax payments. In the past the claimant has been required to obtain a receipt from the distributors who issued the credit card showing that the tax has been paid by him on the fuel purchased which creates a burden upon the claimant to obtain a receipt, or often several receipts, to support his claim.

"Article 9.13 of Chapter 9, Title 122A, Taxation-General, Revised Civil Statutes of Texas, authorized the Comptroller to pay a claim for refund of taxes paid on motor fuel used for non-highway purposes when made and subscribed by the claimant on a form prescribed by the Comptroller subject to the (felony) penalties of Article 1.12 of said Title 122A for making a false or untrue statement to any material fact.

"In lieu of requiring a claimant who purchases motor fuel on a credit card to furnish a receipt of payment from the distributor to whom he has paid the tax, the Comptroller would like to include in the claim form prescribed by him as part of the claim filed subject to the penalties of the said Article 1.12, a declaration that the tax on all motor fuel included in the claim which has been purchased on a credit card has been paid to a duly licensed distributor of motor fuel in Texas, if it can be legally accomplished.

"Will you please advise me whether such statement in the claim would serve as proof that 'the taxes claimed have actually been paid by the claimant' as contemplated by the law?"

The provisions which are applicable to the facts presented and thus govern are Articles 9.13(1) and 9.13(6), Chapter 9, Title 122A, Taxation-General, Vernon's Civil Statutes, which provide, in part, as follows:

Article 9.13(1):

"In all refund claims filed under this Article, the burden shall be on the claimant to furnish sufficient and satisfactory proof to the Comptroller of the claimant's compliance with all provisions of this Article; otherwise, the refund claim shall be denied." (Emphasis added.)

Article 9.13(6):

" . . . . The claim for tax refund shall include a statement that the information shown in each duplicate invoice of exemption attached to the tax refund claim is true and correct, and that deductions have been made from the tax refund claim for all motor fuel used on the public highways of Texas and for all motor fuel used or otherwise disposed of in any manner in which a tax refund is not authorized herein. If upon examination, and

such other investigation as may be deemed necessary, the Comptroller finds that the claim filed for tax refund is just, and that the taxes claimed have actually been paid by the claimant, then he shall issue warrant due the claimant but no greater amount shall be refunded than has been paid into the State Treasury on any motor fuel, and no warrant shall be paid by the State Treasurer unless presented for payment within two (2) years from the close of the fiscal year in which such warrant was issued, but claim for the payment of such warrant may be presented to the Legislature for appropriation to be made from which said warrant may be paid." (Emphasis added.)

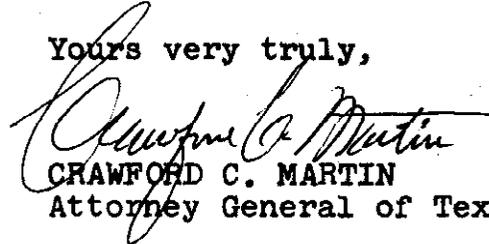
We conclude that the quantum of proof to be required of the taxpayer claimant for his refund is a matter vested largely within the discretion of the Comptroller. A declaration from the claimant subject to the penalties that he has paid the taxes in question to the duly licensed distributor is a fact or circumstance which would constitute some evidence or proof of such fact. Standing alone, however, it is not conclusive evidence upon which the Comptroller might issue a warrant to such claimant. Article 9.13(6) restricts the Comptroller in issuing warrants for refunds in no greater amount "than has been paid into the State Treasury." Also, such statute requires a "finding" by the Comptroller from evidence as he may deem necessary that the tax claim is just and has actually been paid by the claimant.

Accordingly, it is the opinion of this office that the Comptroller, in his discretion, may accept a declaration from the claimant, subject to the penalties of Article 1.12, Taxation-General, that he did in fact pay the tax in question on all motor fuel which he purchased and included in his claim for refund, as satisfactory proof that such claimant paid the taxes to the duly licensed distributor; provided, however, before the Comptroller may issue his warrant for the refund, the statute contemplates that the Comptroller in addition find from his examination of his records and such other investigation as may be deemed necessary, that the claimant actually paid the taxes, the refund claim is just, and that he is not refunding any greater amount than has been paid into the State Treasury on the motor fuel.

S U M M A R Y

The Comptroller, in his discretion, may accept a declaration from the claimant, subject to the penalties of Article 1.12, Taxation-General, that he did in fact pay the tax in question on all motor fuel which he purchased and included in his claim for refund, as satisfactory proof that such claimant paid the taxes to the duly licensed distributor; provided, however, before the Comptroller may issue his warrant for the refund, the statute contemplates that the Comptroller in addition find from his examination of his records and such other investigation as may be deemed necessary, that the claimant actually paid the taxes, the refund claim is just, and that he is not refunding any greater amount than has been paid into the State Treasury on the motor fuel.

Yours very truly,

  
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APPROVED:  
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