



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 12, 1988

Honorable George Greanias
Office of the Comptroller
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

LO-88-116

Dear Mr. Greanias:

You ask:

Does Attorney General Opinion JM-893 (1988) forbid the city from changing the amount of the Seniors and Disabled Exemptions if the city is willing to unwind the process followed for setting the tax rate and begin again, starting with receipt of a new certified property roll?

We answer your question in the negative. Attorney General Opinion JM-893 (1988) would prevent the city from changing the amount of the exemptions after a tax rate had been adopted; the opinion does not address whether a taxing unit is empowered to rescind its ordinance adopting a tax rate, amend its ordinance granting residence homestead exemptions, recalculate its effective tax rate, and then adopt a new tax rate.

In Attorney General Opinion JM-893 (1988), we were asked whether a statute enacted in 1987 permitting a tax exemption for non-income-producing recreational boats applied to all such boats that were listed on the appraisal records as of the date that the statute was effective. We concluded that the statutory exemptions applied to all boats located in a taxing unit as of January 1, 1987, but only in those taxing units that had not certified their tax rolls as of the effective date of the enactment.

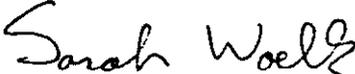
We based our conclusion on the fact that a taxpayer's liability is fixed when two requirements are met: when there has been a valid assessment and when there has been a legal

levy. Under the Tax Code, the statutory authority to "levy" and "assess" is set forth in chapter 26 of the Tax Code. Therefore a taxpayer's liability is fixed when a taxing unit has performed those requirements provided for in chapter 26 of the code. If a taxpayer were granted an exemption after the tax liability were fixed, article III, section 51, and article III, section 55, of the Texas Constitution would be violated. The first constitutional provision prevents a political subdivision from making or authorizing a grant of public funds to any individual, association of individuals, or corporation, in the absence of a public purpose or consideration moving to the political subdivision. The second constitutional provision forbids the release or extinguishment of any debt or liability owed to any political subdivision, except as provided therein.

Attorney General Opinion JM-893 did not address, however, the situation that you describe. Namely, it did not address whether a home rule city could, on its own motion, rescind its ordinance adopting a tax rate, then amend its ordinance granting residence homestead exemptions, then comply with the provisions set forth in chapter 26 of the Tax Code, and finally adopt a new tax rate. No opinion of this office or Texas court case has yet addressed legal issues regarding this specific set of facts.

Very truly yours,


Rick Gilpin, Chairman
Opinion Committee


Sarah Woelk, Chief
Letter Opinion Section

RG/SW/bc

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