



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

November 29, 1990

Honorable Nathan B. Rheinlander
Comal County Attorney
150 N. Seguin, Suite 318
New Braunfels, Texas 78130

LO-90-98

Dear Mr. Rheinlander:

You inform us that, pursuant to chapter 324 of the Local Government Code, a park district was created in Comal County. The district imposes the tax authorized by section 324.099 of the code. On behalf of the district, you ask three questions regarding the scope and proper construction of section 324.099.

Section 324.099 of the Local Government Code provides in pertinent part:

(a) The district may levy and collect taxes and issue revenue permits to carry out any purposes prescribed by this chapter and to pay the obligations of the district.

(b) The taxes that a district may levy apply only within the district and are:

(1) a tax on the price paid for a camping or picnic space or river ingress or egress privileges, at a rate not greater than five percent established by the board, imposed on each person who, under a lease, concession, permit, right of access, license, contract, or agreement pays for the use or possession of a camping or picnic space or for river ingress or egress privileges costing at least \$1 each day;

(2) a tax imposed by resolution of the board at a rate not greater than four percent on the cost of occupancy of a hotel if the cost of occupancy is \$2 or more each day; a tax is not imposed if the accommodations are leased or contracted to one party for at least 30 consecutive days; and

(3) a tax imposed by resolution of the board at a rate not greater than five percent on the price paid for recreational guide or shuttle services or on the rental of any parking space and any water-oriented recreational equipment, including a canoe, tube, raft, boat, or sailing craft intended for use on public inland water in the district; boat slips; fishing tackle; and life jackets.

First, you ask:

Is a marina located within the District on Canyon Lake, which is operating for profit under a lease with the United States Department of Army, required to collect the District's tax on the rental of its boat slips?

Subsection (a) of section 105 of Title 4 of the United States Code provides:

No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

See Polar Ice Cream & Creamery Co. v. Andrews, 375 U.S. 361 (1964); Bullock v. General Dynamics Corp., 533 S.W.2d 118 (Tex. Civ. App. - Austin 1976), aff'd General Dynamics Corp. v. Bullock, 547 S.W.2d 255 (Tex. 1977), cert. denied 434 U.S. 1009 (1977). The answer to your first question is controlled by the clear terms of the federal statute. Accordingly, we answer your first question in the affirmative.

Your second question asks:

Is the rental of a boat slip for 30 days, or a period of time in excess of 30 days, taxable by the District?

Subdivision (2) of subsection (b) provides that a tax under section 324.099 may not be imposed on the cost of

occupancy of a hotel if the accommodations are leased for a period of at least 30 consecutive days. It is suggested that, since subdivision (2) so provides, no tax may be imposed under subdivisions (1) and (3) for the right of river ingress and egress and for rental of a boat slip if the right of ingress or egress or the rental of the boat slip is for a period of at least 30 days.

We disagree. We conclude that, by the clear terms of the section, subdivisions (1) and (3) impose a tax without regard for the length of time that a person may have a right of river ingress or egress or the length of time that one may rent a boat slip.

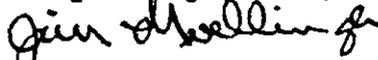
Your final question asks:

Is a non-profit organization that holds a Certificate of Exemption, issued by the State Comptroller's Office, required to pay the tax imposed by the District on camping and water oriented rental equipment?

Qualifying religious, educational, and public service organizations are exempted from the reach of the taxes imposed by chapter 151 of the Tax Code, the Limited Sales, Excise, or Use Tax. You suggest that such organizations are also exempt from the reach of the section 324.099 tax, because the section 324.066 tax is analogous to a sales and use tax.

Regardless of whether the section 324.099 tax is analogous to a sales and use tax, organizations that qualify as exempt under chapter 151 are not exempt from the reach of the section 324.099 tax, absent a statute so providing. See Attorney General Opinion JM-865 (1988). Accordingly, we answer your third question in the negative.

Very truly yours,



Jim Moellinger
Assistant Attorney General
Opinion Committee

APPROVED: Rick Gilpin, Chairman
Opinion Committee

RG/JM/mc

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