



Texas Department of Licensing and Regulation

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Ann W. Richards
Governor

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SEP 26 91

Opinion Committee

September 16, 1991

The Honorable Dan Morales
Attorney General of Texas
Supreme Court Building
Austin, Texas 78711

Re: Request for an Attorney General's Opinion

Dear Mr. Morales:

Boxing and Wrestling have been regulated in Texas since 1933 and a gross receipts tax was remitted to the state based on admission fees for live contests held in Texas. With the advent of electronic communications, a gross receipts tax was levied against closed circuit television broadcasts of boxing matches pursuant to Article 7047a-19, V.A.C.S., as an amusement tax. See *Comptroller of Public Accounts v. Texas Boxing Enterprises, Inc.*, 331 SW2d 817, Tex. Civ. App. (Austin), 1960, no writ. The legislature later charged this agency, rather than the comptroller, with the responsibility for collecting the taxes on closed circuit televised boxing matches. In the above mentioned boxing case, however the court did give some guidance that all taxes should be collected regardless of who collects them, when it said at page 821,

"It should be, and we find no contrary intent here, that the State should collect all taxes to which it is entitled but no more. It should be, and we find no contrary intent here, that the taxpayer pay only the taxes which he owes and no more."

The Texas Boxing and Wrestling Act, Article 8501-1, V.A.C.S., in Section 11 provides for the collection by this agency of a three (3) per cent gross receipts tax on boxing matches which are conducted in Texas, or shown on closed circuit telecasts in Texas. Section 11(b) recites specifically,

"Any person who charges an admission fee for exhibiting a simultaneous telecast of any live, spontaneous, or current boxing match, contest, or exhibition on a closed circuit telecast must possess a boxing promoter's license issued pursuant to this Act and must obtain a permit for each closed circuit telecast shown in Texas. The gross receipts tax described in Section 11(a) herein is applicable to said telecast, and the boxing promoter shall furnish to the department within 72 hours after the

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event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of the tax due shall be attached to the verified report."

Question: Is a special pay per view fee paid by a subscriber to a cable television company for the opportunity to view a simultaneous telecast boxing match an admission fee under the above quoted section of Article 8501-1, for which this agency is responsible for collecting the gross receipts tax? Another way to state the question is, "Is the subscriber paying an admission fee to be electronically admitted via closed circuit instead of physically admitted to the arena itself? It is, in fact a closed circuit telecast that is being sent to a lot of locations and the non-subscribing public is excluded. X

We currently regulate the situation where a licensed boxing promoter in Texas buys the rights to resell a fight to coliseums, auditoriums or other locations where an admission fee is charged to view the fight. In the situation of pay for view, the subscriber or customer is the end user and has no right to charge an admission fee even if the subscriber is a sports bar or night club as opposed to a citizen watching in his home.

The point is that the subscribers/customers of cable television companies are the fight fans who are paying an admission fee to be electronically admitted to the fight via closed circuit television.

If a cable company were required to be licensed this agency could then collect the tax based on the number of pay per view customers purchasing "admission". This agency has heard that pay per view customers paid \$18,000,000 to cable companies to view the Foreman vs. Holyfield fight a few months ago. If the companies had been required to register with this agency and pay the tax, that would have been income to Texas in the amount of \$540,000 for that fight alone. Plus, the \$500 per license, per year for cable companies would probably produce close to another \$1,000,000 in fees annually. The next championship fight is between Hollyfield and Tyson and is scheduled for November 8, 1991, therefore there is some urgency to this request.

It is the position of this agency that the legislature intended that the tax be collected. The purpose clause of the Boxing Act recites,

"It is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that the boxing industry (in this state) should be regulated.....through the imposition of certain

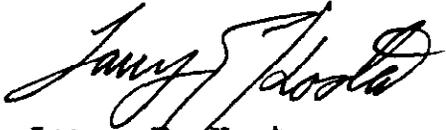
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regulations on the boxing industry and to impose a gross receipts tax upon the proceeds obtained from boxing performances to finance said regulation. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes." (emphasis added)

It is our opinion that we should collect the tax from cable companies because they are in fact the "ticket takers" charging an admission fee in the electronic arena. The admission fee to the event is the cost of pay per view.

Respectfully submitted,



Larry E. Kosta
Executive Director

LEK/es

CC: John Sharp
Comptroller