



**CAMERON COUNTY DISTRICT ATTORNEY**

**RECEIVED** CAMERON COUNTY COURTHOUSE  
974 E. HARRISON STREET - BROWNSVILLE, TEXAS 78520

LUIS V. SAENZ  
Cameron County  
District Attorney

APR 23 93

Opinion Committee

April 20, 1993

MBJ

FILE # 2016191159

I.D. 19943

Opinions Committee  
Office of the Texas Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

**RO-528**

Re: Request for Attorney  
General Opinion

TO THE COMMITTEE:

Pursuant to the V.T.C.A., Government Code Sections 402.041 et seq., I respectfully request that the Texas Attorney General advise the undersigned in regard to the following question that has arisen in my jurisdiction concerning the interpretation of state laws governing the application of Texas Tax Code, Section 33.07 penalties to Section 33.02 installment agreements entered prior to July 1 of a given year.

I.

THE FACTS

Mr. Tony Yzaguirre, Jr., Tax Assessor-Collector for Cameron County, Texas, is in the process of arranging installment agreements for the payment of delinquent taxes as provided by Section 33.02 of the Tax Code. The Commissioners Court of Cameron County has entered into an agreement with a law firm to enforce the collection of delinquent taxes in accordance with Section 6.30 of the Tax Code. The Commissioners Court of Cameron County has passed a resolution under Section 33.07 of the Tax Code providing for a 15% penalty on taxes that remain delinquent on July 1 of the year in which they become delinquent to defray the cost of the collection of such delinquent taxes. The compensation under the contract with the law firm is the 15% penalty enabled by Section 33.07 and required by the Commissioners Court.

II.

THE ISSUES PRESENTED

(1) Whether or not the Texas Tax Code Section 33.07, 15% penalty applies to an installment agreement entered under Section 33.02 of the Tax Code prior to July 1 of the year in which the taxes become delinquent.

(2) If the Section 33.07, 15% penalty applies to a Section 33.02 agreement, does it apply to the agreement, only for balance due and unpaid after July 1, or does it apply to the balance due at the time the agreement is entered.

(3) If the Section 33.07 penalty applies to a Section 33.02 agreement, could the Commissioners Court, in its resolution approving and providing for Section 33.07 penalty, limit such penalty only to those delinquent accounts that remain delinquent as of July 1 of the year in which the tax is due if the person owing the tax has not entered into a Section 33.02 agreement with a proviso that if the person who entered the 33.02 agreement defaults in that agreement that the 33.07 penalty would attach to the balance due as of the date of default.

III.

LAW CONTROLLING OR IMPACTING THE ISSUES

The law controlling or impacting the issues in this case is as follows:

V.T.C.A., Tax Code Section 6.30. Attorneys  
Representing Taxing Units

"...

(c) The governing body of a taxing unit may contract with any competent attorney to represent the unit to enforce the collection of delinquent taxes. The attorney's compensation is set in the contract, but the total amount of compensation provided may not exceed 20% of the amount of delinquent tax, penalty, and interest collected.

...."

V.T.C.A., Tax Code Section 31.02. Delinquency Date.

"(a) except as provided by Subsection (b) of this Section and by Sections 31.03 and 31.04 of this

code, taxes are due on receipt of the tax bill and are delinquent if not paid before February 1 of the year following the year in which imposed.

...."

(COMMENT: Subsection (b) of Section 31.02 deals with and defines people who were serving on active duty during the Persian Gulf War; such subsection exempts under certain circumstances those persons eligible and identified therein from paying interest and penalty. Section 31.03 deals with split payment of taxes and Section 31.04 deals with postponement of the delinquency date under certain circumstances.)

V.T.C.A., Tax Code, Section 33.02 Installment Payment of Delinquent Taxes.

(a) The collector for a taxing unit that collects its own taxes may enter an agreement with a person delinquent in the payment of the tax for payment of the tax, penalty, and interest in installments. The agreement must be in writing and may not extend for a period of more than thirty-six months.

(b) Interest accrues as provided by Subsection (c) of Sections 23.01 of this code on the unpaid balance during the period of the agreement.

(c) A property owner's execution of an installment agreement under this section is an irrevocable admission of liability for all taxes, penalties, and interest that are subject to the agreement.

(d) Property may not be seized and sold and a suit may not be filed to collect a delinquent tax subject to an installment agreement unless the property owner:

(1) fails to make payment as required by the agreement;

(2) fails to pay other property taxes collected by the unit when due as required by the collector; or

(3) breaches any other condition of the agreement.

(e) Execution of an installment agreement tolls the limitation periods provided by Section 33.05 of this code for the period during which enforced collection is barred by Subsection (d) of this Section."

(COMMENT: Subsection (c) of Section 33.01 fixes the interest rate on a delinquent tax. Section 33.05 is the statute of limitations on the question of taxes.)

V.T.C.A., Tax Code Section 33.06. Deferred Collection of Certain Taxes.

"(a) An individual is entitled to defer or abate a suit to collect a delinquent tax if he is 65 or older and he owns and occupies as a residence homestead the property on which the tax subject to a suit is delinquent.

..."

V.T.C.A., Tax Code Section 33.07. Additional Penalty for Collecting Cost.

"(a) A taxing unit or appraisal district may provide, in the manner required by law for official action by the body, that taxes that remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty to defray cost of collection, if the unit or district or another unit that collects taxes for the unit has contracted with an attorney pursuant to Section 6.30 of this Code. The amount of the penalty may not exceed 15% of the amount of taxes, penalty, and interest due.

(b) A tax lien attaches to the property on which the tax is imposed to secure payment of the penalty.

(c) If a penalty is imposed pursuant to this section, a taxing unit may not recover attorney's fees in a suit to collect delinquent taxes subject to the penalty.

(d) If a taxing unit or appraisal district provides for a penalty under this section, the collector shall deliver a notice of delinquency and of the penalty to the property owner at least thirty and not more than sixty days before July 1."

Comptroller Of Public Accounts, State Of Texas,  
Opinion Letter dated March 23, 1993 to Mr. Tony  
Yzaguirre, Jr., Tax Assessor-Collector, Cameron County,  
Brownsville, Texas.

"Dear Mr. Yzaguirre:

"..."

You also ask if the 15-percent attorney fee for delinquent taxes applies to an installment agreement, if the taxpayer enters into an installment agreement before July 1 of the year in which the taxes became delinquent. The taxing unit does not apply the fee, if a taxpayer enters into a timely installment agreement. Interest accrues on the unpaid balance during the term of an installment agreement (Section 33.02(b)). The Property Tax Code does not mention penalties, so it appears the Legislature did not intend for penalties to accrue after a taxpayer enters into an installment payment agreement. We feel the same rationale applies to the additional 15-percent penalty for attorney's fees (Section 33.07). If a taxpayer enters into an installment agreement with your taxing unit before July 1, of the year in which the taxes became delinquent, the additional 15-percent penalty does not accrue. For example, to avoid the additional attorney's fees, a taxpayer would have to enter into an installment agreement with the County to pay his/her 1992 tax before July 1, 1993.

...."

(COMMENT: This letter opinion was issued by Carolyn J. Kyzar, Lead Technical Assistant, Property Tax Division.)

Comptroller of Public Accounts, State of Texas,  
Opinion Letter dated April 16, 1993 to Mr. Tony  
Yzaguirre, Jr., Tax Assessor-Collector, Cameron County,  
Brownsville, Texas.

"Dear Mr. Yzaguirre:

"...

Section 33.02, Tax Code, provides for a collector to enter into an agreement with a delinquent taxpayer for payment of the taxes, penalties and interest in installments. Subsection (b) provides that interest accrues on the unpaid balance - the subsection does not provide for penalties to accrue on that balance. Subsection (d) states that a suit cannot be filed to collect delinquent taxes subject to an installment agreement unless the owner fails to make payments, doesn't pay other taxes or otherwise violates the installment agreement. Section 33.07, Tax Code, permits a taxing unit that contracts with an

attorney to collect its delinquent taxes to adopt an additional penalty of up to 15 percent to defray the costs of collection. The additional penalty becomes due if the taxes remain delinquent on July 1 of the year in which they become delinquent (as you know, these taxes become delinquent on February 1).

We have consistently interpreted Section 33.02(b) to allow a taxpayer to stop the imposition of penalties on delinquent taxes by entering into an installment agreement. Throughout the Tax Code, the Legislature specifies "interest" when it means interest and "penalties" when it means penalties. Further, we think the clear intent of Section 33.02 was to allow a taxpayer to formally agree to pay delinquent taxes and avoid the imposition of further penalties or a suit to collect taxes - a taxpayer would have little or no incentive to enter into an installment agreement if penalties continued to accrue or he could still be sued for collection.

Under our interpretation, a taxpayer could not be liable for the 15 percent additional penalty if he entered into the installment agreement before July 1. Section 33.02 does not permit penalties to accrue after the agreement is made and Section 33.07 does not permit the 15 percent additional penalty to attach until July 1. This has been our consistent administrative construction of the law.

...."

(COMMENT: This letter opinion was issued by Ray Bonilla, General Counsel for the Comptroller of Public Accounts.)

#### IV.

#### OUR ANALYSIS/CONCLUSIONS

Our analysis leads to opposing conclusions depending on which sections of the Tax Code one emphasizes.

The Comptroller of Public Accounts, State of Texas proposes a convincing position. That is, their analysis seems to simply look to Section 33.02, being the section that authorizes the installment payment in question. Their position is that because Section 33.02(b) specifically

provides for payment of interest on the unpaid balance under Section 33.01(c), but omits mention of penalties that therefore the penalty does not apply.

However, in looking specifically at Section 33.07 which provides for the additional penalty for the collection of taxes it contains the phrase "...that taxes that remain delinquent on July 1 of the year in which they become delinquent incur an additional penalty ...." This phrase is significant in that it states "that remain delinquent". When one turns to the definition of delinquency in Section 31.02, Subsection (a) thereof excepts only Sections 31.03, 31.04 and Subsection (b) of Section 31.02 from the definition of delinquency. It simply states that taxes are delinquent if not paid before February 1 of the year following the year in which imposed subject to the exceptions just stated. Here, similar to the omission to provide for penalties in Section 33.02, the Legislature has omitted to exempt Section 33.02 installment agreements from the delinquency definition. Moreover, the Legislature has provided wording in Section 33.07 that if taxes remain delinquent on July 1 of the year in which they become delinquent they incur the additional penalty to defray cost of collection.

It must be noted that there is no wording in any section found that impacts this issue that would indicate under any circumstance that the Section 33.07 penalty could be applied to that portion of a Section 33.02 installment agreement that is paid prior to July 1. That is, if a taxpayer entered into an agreement under Section 33.02 for thirty-six months in which to pay their delinquent taxes, that portion of the taxes paid prior to July 1 would not be subject to Section 33.07 penalty; however, if under the above analysis of the Section 31.02 delinquency definition, the Section 33.07 penalty does apply to Section 33.02 installment agreements, then the Section 33.07 penalty would apply to any taxes remaining delinquent and paid after July 1 of the year in which they became delinquent.

The conclusion, then, is that we cannot reconcile Section 33.02 installment agreements with Section 33.07 penalties to defray the cost of collection. Section 33.02 provides only for interest under the agreement, yet Section 33.07 purports to apply to all taxes that remain delinquent after July 1, and the delinquency definition provided in Section 31.02 does not except a Section 33.02 installment agreement from the delinquency definition.

#### IV.

#### CERTIFICATIONS

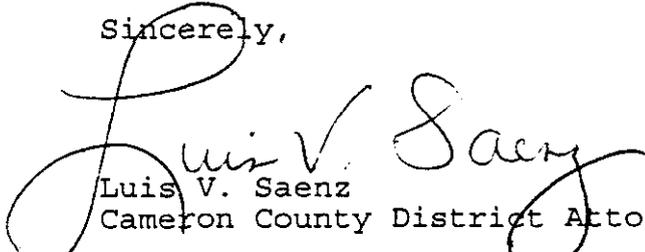
I hereby certify, because this office is charged with the enforcement of the Constitution and laws of the State of

Texas, that this questioned law affects matters within the jurisdiction of my office and constitutes a matter in which the State is "interested". I also further certify that this matter is not currently "in litigation."

\* \* \* \* \*

Should you require any additional information, please do not hesitate to contact me. Thank you for your assistance.

Sincerely,

  
Luis V. Saenz  
Cameron County District Attorney

- Attachments:
1. Copy of the March 23, 1993 letter from the Lead Technical Assistant for the Comptroller of Public Accounts, State of Texas to Mr. Tony Yzaguirre, Jr., Tax Assessor-Collector for Cameron County.
  2. Copy of April 16, 1993 letter from the General Counsel for the Comptroller Of Public Accounts, State of Texas to Mr. Tony Yzaguirre, Jr., Tax Assessor-Collector for Cameron County, with two attachments.