



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

GERALD C. MANN

~~ATTORNEY GENERAL~~
ATTORNEY GENERAL

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-2765-A

Re: Limiting Opinion No. 0-2765, which holds a certain motor fuel tax refund claim to be invalid, to such portion of the claim as was based upon invoices of exemption which were not issued at the time of delivery of the motor fuel in question, and holding the balance of such claim as was based upon invoices of exemption duly and timely issued, to be valid.

In our Opinion No. 0-2765, we held a described motor fuel tax refund claim to be wholly invalid and void because the supporting invoices of exemption were not executed, issued and delivered at the time of the delivery of the motor fuel involved in such claim, as required by Article 7065a-13 (c), Revised Civil Statutes of Texas, and that you were therefore required, under Article 4350, Revised Civil Statutes of Texas, to set up the amount of such refund claim warrant as a debt of the claimant to the State, and to refuse to issue future warrants until payment thereof.

Upon re-examination of the factual statement submitted in your letter, it appears that only a portion of this refund claim involved motor fuel upon which an invoice of exemption did not issue at the time of delivery thereof. But the opinion under review proceeded upon the assumption that invoices of exemption had not issued at the time of the delivery of the entire amount of motor fuel covered by the claim.

Consequently, it is our purpose here not to depart in anywise from the conclusions reached in our Opinion No. 0-2765, but only to limit the scope thereof in accordance with the foregoing facts. you are therefore advised that such portion of the motor fuel tax refund claim described by you, as was not supported by invoices of exemption issued at the time of delivery of the motor fuel covered thereby, is wholly void and you are required, under Article 4350, Revised Civil Statutes of Texas, to set up the

amount thereof as a debt against the claimant, in the issuance of future warrants. But the entire claim is not invalidated, and such portion thereof as was regularly supported by invoices of exemption which issued within the time and manner provided by law, is not vitiated by the invalid portion of the claim, and is not a debt against the claimant within the meaning of said Article 4350, Revised Civil Statutes of Texas.

Trusting this fully clarifies the extent of our ruling in Opinion No. 0-2765, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Pat M. Neff, Jr.
Pat M. Neff, Jr.
Assistant

PMN:js:wc

APPROVED MAR 25, 1941
s/Grover Sellers
FIRST ASSISTANT
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman