



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

JOHN G. BULL,
ATTORNEY GENERAL

April 19, 1976

The Honorable Bob Bullock
Comptroller of Public Accounts
State of Texas
Austin, Texas 78774

Opinion No. H-810

Re: Refund of admissions
taxes collected under an
unconstitutional statute.

Dear Mr. Bullock:

You have asked our opinion regarding your authority to refund admissions taxes.

Article 1.11A, Taxation-General, permits the Comptroller, when he "determines that any person, firm, or corporation has through mistake of law or fact overpaid the amount due the State on any tax collected or administered by the Comptroller," to "refund such overpayment by warrant on the State Treasury from any funds appropriated for such purpose." This refund provision is applicable to "any occupation . . . tax," which includes, *inter alia*, the admissions tax. Calvert v. McLemore, 358 S.W.2d 551, 552 (Tex. Sup. 1962). The 64th Legislature specifically appropriated such funds:

As much of the respective taxes collected and administered by the Comptroller as may be necessary is hereby appropriated and set aside to pay refunds as provided by law. General Appropriations Act, Acts 1975, 64th Leg., ch. 743, at 2574.

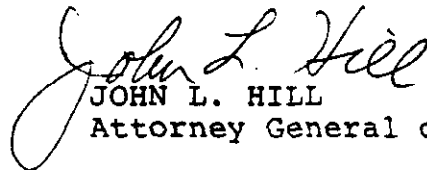
It is well established that an appropriation, in order to be valid, need not name "a certain sum or even a certain maximum sum." National Biscuit Co. v. State, 135 S.W.2d 687, 693 (Tex. Sup. 1940). In our opinion, the Legislature's appropriation of funds to the extent necessary to pay valid and legal refunds was a lawful exercise of its authority.

We note that the Comptroller may not "incur an obligation in excess of the amounts appropriated . . . for the respective objects or purposes named." General Appropriations Act, Acts 1975, 64th Leg., ch. 743, § 23, at 2859. Thus, the Comptroller is prohibited from making any refund payments in excess of the amounts available from the relevant funds. We have not been asked, nor do we decide, any questions relating to the validity of any particular refund.

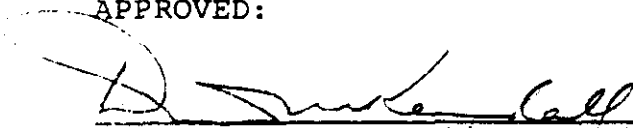
S U M M A R Y

There is an appropriation in the General Appropriation Bill enacted by the 64th Legislature which authorizes the Comptroller to pay legal and valid refunds of taxes paid through mistake of law or fact.

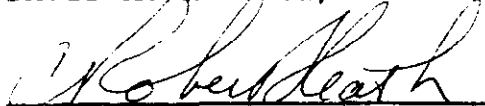
Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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