THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

JOHN BEN SHEPPERD
ATTORNEY GENERAL

February 10, 1955

Hon. Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. MS-172

Re: Construction of Articles 7060 and 7060a, V.C.S., concerning gross receipts tax.

Dear Mr. Calvert:

You request the opinion of this office as to the construction of Articles 7060 and 7060a, Vernon's Civil Statutes, respectively, with special reference as to the amount of gross receipts taxable against the taxpayers where the tax is collected by the taxpayer from the purchaser. We shall first consider Article 7060.

Under this statute, gas, electric light, electric power or water works or water and light companies "located within any incorporated town or city and used for local sale or distribution" are required on the first day of January, April, June and October of each year to file with the State Comptroller a report showing "the gross amount received from such business done in each incorporated city or town within this State" for the preceding quarter.

At the time of filing this quarterly report and based upon it, the taxpayer must pay to the State Treasurer an occupation tax for the succeeding quarter measured by the gross receipts and graduated according to the size of the municipality as follows:

(a) In cities or towns of more than 1,000 and less than 2,500 inhabitants, .484% of said gross receipts as shown by said report.

(b) In cities or towns of more than 2,500 and less than 10,000 inhabitants, .891% of said gross receipts as shown by said report.

(c) In cities or towns of 10,000 or more inhabitants, 1.66375% of said gross receipts as shown by said report.

The tax imposed by this statute is assessed against the gas, light, power or water works companies and not against the customers of such companies. If the taxpayer adds to and collects from the customer the amount of the tax, this should be included as part of the gross receipts received by the taxpayer in the computation of the tax. In other words, it constitutes a part of the taxpayers' gross receipts.

We now pass to a consideration of Article 7060a, and as to this Article you pass the same question. This Article of the statute imposes an occupation tax of 2.42% of the gross amount received from the services or duties specified in the statute in connection with the drilling completion, reworking or reconditioning of oil or gas wells. The tax is levied upon the services, supplies and activities and in the manner provided for in the statute. This tax is likewise levied against the person, as defined in the statute, engaged in such activities as the statute provides and not against the customer paying for such services. If the taxpayer adds to and receives from the customer the amount of the tax, the same should be included as part of the gross receipts upon which the tax is calculated. Reports upon which the tax is determined are made to the Comptroller monthly and the tax paid to the Comptroller, and if the taxpayer collects the tax from the customer it should be reported as part of the gross receipts for the month collected.

You advise that for the past five years the Comptroller's office has treated taxes passed on to the customer by the taxpayer as part of the gross receipts on which the tax is calculated under Articles 7060 and 7060a, respectively. We think this departmental construction, apparently acquiesed in by the Legislature, affords an additional reason why this item should be considered part of the gross receipts upon which the taxpayer is required to pay the tax under these provisions of the statute. It is presumed that the Legislature was aware of this practice and since it has met at least twice in the last five years and has made no change in the statute, it is assumed that it was satisfied with the construction placed upon the statute by the Comptroller.

Moreover, as you point out in your opinion request, Article 7047b, V.C.S., imposing the gas production tax, makes specific provision where a producer is reimbursed by a purchaser for some part of the production tax that the amount of the reimbursement shall not be considered a part of the value on which a production tax is calculated. These taxing provisions constituted a part of the same Act and had it been the intention of the Legislature to apply the same rule as to the taxes provided for in Articles 7060 and 7060a, specific provision would have been made for the exclusion of taxes paid to the taxpayer where this tax is passed on by the taxpayer to the customer.

The fact that no such specific provision is contained in Articles 7060 and 7060a lends weight to the proposition that taxes passed on by the taxpayer to the customer shall be considered part of the taxable gross receipts.

Yours very truly,

JOHN BEN SHEPPERD
Attorney General

By /s/ L. P. Lollar
Assistant

LPL:rn:elb