



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 30, 1993

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002-1891

Letter Opinion No. 93-72

Re: Whether a member of the state militia is exempt by virtue of Government Code section 431.083 from payment of the optional county motor vehicle registration fee found in article 6675a-9a, V.T.C.S. (ID# 18775)

Dear Mr. Driscoll:

You ask us whether the exemption from road and street taxes granted by Government Code section 431.083 to officers and enlisted persons complying with their military duties in the state military forces applies to the optional county motor vehicle registration fee of article 6675a-9a, V.T.C.S.

Section 431.083 of the Government Code provides as follows:

(a) An officer or enlisted person in the state military forces¹ who complies with the person's military duties as prescribed by this chapter is exempt from payment of a road or street tax.

(b) To obtain the exemption, a person must file in the county tax assessor-collector's office an affidavit, sworn to before a notary

¹*State military forces* is defined in Government Code section 431.001, subsection (3), to mean "the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law." The other definitions in section 431.001 are as follows:

(1) "Reserve militia" means the persons liable to serve, but not serving, in the state military forces.

(2) "State militia" means the state military forces and the reserve militia.

....

(4) "Texas National Guard" means the Texas Army National Guard and the Texas Air National Guard.

public or other person authorized to administer oaths in the state, in the following form:

"I, _____, do hereby solemnly swear or affirm that I am a member in good standing of the state military forces of the State of Texas.

Subscribed and sworn to before me this ____ day of _____,

SEAL

Notary Public in and for
_____ County, Texas"

Gov't Code § 431.083 (footnote added). The original statutory predecessor of section 431.083 was enacted in 1905. Acts 1905, 29th Leg., ch. 104, § 83.²

Article 6675a-9a, V.T.C.S., provides in part as follows:

(a) The Commissioners Court of a County by order may impose, in addition to the fee imposed by this Act for registering a vehicle in this State, an extra fee in an amount set by the Commissioners Court that does not exceed Ten Dollars (\$10) for each vehicle registered in the County. A vehicle that may be registered under this Act without payment of a registration fee may be registered in the County without payment of the extra fee.

....

(d) The [Texas] Department [of Transportation] shall collect the extra fee on a vehicle owned by a resident of a County imposing a fee under Subsection (a) of this section that under this Act must be registered directly with the Department. The Department shall remit all fees collected for the County under this subsection to the County Treasurer for deposit in the County Road and Bridge Fund.

Article 6675a-9a was enacted in 1983. Acts 1983, 68th Leg. ch. 822, § 1.

²The original statute provided in pertinent part: "All officers and enlisted men of the active militia of this State who comply with their military duties as prescribed by this Act shall be entitled to . . . exemption from the payment of any road or street tax." Acts 1905, 29th Leg., ch. 104, § 83.

Your tax assessor/collector wishes to know whether the extra registration fee provided for in article 6675a-9a is a "road or street tax" that would be subject to the exemption contained in section 431.083.

The Texas Supreme Court in *Payne v. Massey*, 196 S.W.2d 493 (Tex. 1946), characterized the state motor vehicle registration fee as "a privilege tax in the nature of a license or toll for the use of the highways of this state." *Id.* at 495. Such characterization of the state fee as a tax apparently was based on the well-established but sometimes difficult-to-apply principle that

[w]hen, from a consideration of the statute as a whole, the primary purpose of the fees provided therein is the raising of revenue, then such fees are in fact occupation taxes, and this regardless of the name by which they are designated. On the other hand, if its primary purpose appears to be that of regulation, then the fees levied are license fees and not taxes.

Hurt v. Cooper, 110 S.W.2d 896, 899 (Tex. 1937).

We need not attempt to apply the above-quoted principle to the county registration fee statute. Even if the optional county registration fee is a tax, it must be specifically a "road or street tax" before section 431.083 would operate as an exemption from the tax. You suggest that the legislature may have intended by the phrase "road or street tax" in section 431.083 to refer only to an ad valorem road tax such as the one currently found at article 6702-1, sections 4.101 and 4.102,³ V.T.C.S. It is unnecessary to consider the scope of *road or street tax* in section 431.083, because we conclude that article 6675a-9a, being a specific statute and a later enactment, would operate as an exception to the general tax exemption in section 431.083 even if that section would apply by its terms to the optional county registration fee. *See, e.g., Forwood v. City of Taylor*, 214 S.W.2d 282, 285-86 (Tex. 1948) ("A fundamental and universally accepted rule of construction is that a general provision must yield to a succeeding specific provision dealing with the same subject matter").

³Section 4.101, article 6702-1, V.T.C.S., provides: "The commissioners court of each county may levy a tax, part of the revenue from which may be used to establish the road and bridge fund, as long as the limitations in Article VIII, Section 9, of the Texas Constitution, as amended, are observed." Section 4.102, subsection (a), provides in part:

On presentation to the commissioners court at any regular session of a petition signed by 200 qualified voters of the county or a petition of 50 persons so qualified in any political subdivision or defined district of the county requesting the election, the court shall order an election to determine whether the county shall levy a road tax not to exceed 15 cents on the \$100 value of property under the provisions of the amendment of the 1889 to the constitution of the State of Texas, adopted in 1890.

The language of the motor vehicle registration statutes manifests the legislative intent that the requirements of those laws shall apply to all persons who fall within the express regulation thereof, with only those exceptions expressly provided therein. Article 6675a-2, subsection (a), V.T.C.S., provides in part:

Except as provided by this subsection, every owner of a motor vehicle, trailer or semitrailer used or to be used upon the public highways of this State shall apply each year to the [Texas Department of Transportation] through the County Tax Collector of the county in which he resides for the registration of each such vehicle owned or controlled by him for the ensuing or current calendar year or unexpired portion thereof.

The rest of that article provides for various exemptions for certain vehicles from the registration requirement or from the payment of the full registration fee.⁴ Articles 6675a-3,⁵ 6675a-5a,⁶ and 6675a-5b,⁷ V.T.C.S., also set forth several exemptions from

⁴Subsection (b) of article 6675a-2 exempts from the registration requirement farm tractors, certain farm trailers and farm semi-trailers, and farming implements; and subsection (b-1) exempts power sweepers. Subsection (c) exempts certain farm trailers, farm semi-trailers, and water well drilling and construction machinery from the payment of the regular registration fee but requires the payment of a \$5 fee for a distinguishing license plate. Subsection (h) provides for a 50 percent discount off the regular registration fee for "truck tractors, semitrailers, or low-boy trailers used exclusively in the transporting on the highways of th[e owners'] own soil conservation machinery or equipment used in clearing land, terracing, building farm ponds, levies or ditches." Subsection (k) exempts from the registration requirement golf carts used for transportation to and from a golf course. Subsection (l) exempts from the payment of the regular registration fee certain vehicles used for loading logs on other vehicles but requires the payment of a \$62.50 fee for a distinguishing license plate.

⁵Subsection (c) of article 6675a-3 exempts from the registration fee certain motor vehicles, trailers, and semi-trailers belonging to the United States Government, the state of Texas, or any county, city, or school district of this state.; certain vehicles designed and used for fire fighting; and vehicles used in county marine law enforcement activities, including rescue operations. Subsection (d) exempts from the registration fee certain vehicles, trailers, and semi-trailers owned by nonprofit disaster relief organizations and used by them solely for emergencies but requires the payment of a \$5 fee for a distinguishing license plate. Subsection (g) exempts from the registration fee vehicles registered to be operated as ambulances and used solely as an ambulance by a nonprofit volunteer ambulance company. Subsection (h) exempts from the registration fee vehicles owned by the Texas Wing of the Civil Air patrol and used by members of that entity solely as an emergency services vehicle. Subsection (i) exempts from the registration fee all-terrain vehicles owned by the state or a local government and operated solely for public safety and welfare purposes.

⁶Article 6675a-5a, V.T.C.S., exempts from the annual registration fee certain antique passenger cars, trucks, and motorcycles and provides for a five-year registration period for those motor vehicles at a reduced charge.

⁷Article 6675a-5b, V.T.C.S., exempts from the annual registration fee certain motor vehicles owned and operated by nonprofit service organizations for parade purposes.

payment of the full registration fee. Articles 6675a-5, 6675a-6, 6675a-61/2, and 6675a-6a set forth the regular annual license fees to be charged for different kinds of motor vehicles.

The registration statutes contain several provisions relating to exemptions for current or former members of the national or state armed forces. Article 6675a-5e entitles certain disabled veterans of the United States armed forces to register one passenger car or light commercial vehicle without paying the annual registration fee. Article 6675a-5g provides similarly for former certain prisoners of war. Article 6675a-5e.2 entitles a recipient of the Congressional Medal of Honor to register one passenger car or light commercial vehicle without paying the annual registration fee or service charge. There is no statutory exemption from the registration fee, however, for members of the Texas military forces.

We believe that the maxim *expressio unius est exclusio alterius* applies here so that the numerous and detailed exemptions expressed in the registration statutes indicate the legislature's intent that those exemptions be exclusive. *See, e.g., Harris County v. Crooker*, 248 S.W. 652, 655 (Tex. 1923) ("The inclusion of the specific limitation excludes all others").⁸ This intent is evident also in the express exclusion from the optional fee in article 6675a-9a, subsection (a), of any "vehicle that may be registered under this Act without payment of a registration fee." These words plainly show the limitation of the exemption from the optional county fee. Because article 6675a-5e.3 requires militia members to pay a registration fee, the exemption of article 6675a-9a, subsection (a), from the optional fee is not applicable. We conclude, therefore, that the exemption from any "road or street tax" contained in Government Code section 431.083 does not apply to the optional county registration fee contained in article 6675a-9a, V.T.C.S.

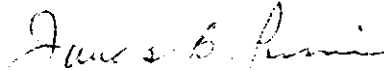
⁸Further evidence of a deliberate legislative intent not to exempt the state military forces is found in article 6675a-5e.3. That article provides that active members of the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard, among others, may purchase special license plates for their passenger cars or light commercial motor vehicles showing the owner's membership and sets the fee for registration and the issuance of the special plates as "the regular fee for the particular kind of vehicle." Members of the Texas Army National Guard, the Texas Air National Guard, and the Texas State Guard are members of the state military forces as defined in Government Code section 431.001 for the purposes of the exemption from road or street taxes in section 431.083.

V.T.C.S. article 6675a-5e.3 might be read consistently with the exemption of section 431.083 as requiring the payment of the regular registration fee only if the militia member requests the issuance of a special license plate rather than a regular license plate. Such a reading would conflict with the apparent purpose of article 6675a-5e.3, however, because it would result in the imposition of a substantial tax on a militia member's choice to have special license plates. The apparent purpose of the provision of article 6675a-5e.3 is to recognize and honor militia members; therefore, a construction of the provision as permitting the issuance of special plates *for no extra charge* (over the normal registration fee) is more in keeping with that purpose. Article 6675a-5e.3 indicates that the legislature did consider members of the state military forces and deliberately omitted to exempt them from the registration fee.

S U M M A R Y

The exemption from any "road or street tax" granted in Government Code section 431.083 to officers and enlisted persons complying with their military duties in the state military forces does not apply to the optional county motor vehicle registration fee provided for in article 6675a-9a, V.T.C.S.

Yours very truly,

A handwritten signature in cursive script, appearing to read "James B. Pinson".

James B. Pinson
Assistant Attorney General
Opinion Committee