

The Senate of The State of Texas



RQ-0223-jc

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APR 19 2000
OPINION COMMITTEE

Senator Eddie Lucio, Jr.

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April 19, 2000

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I.D. # 41376

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The Honorable John Cornyn
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548

OFFICE OF THE ATTORNEY GENERAL
EXECUTIVE ADMINISTRATION

Re: Request for an opinion regarding the proper interpretation of Texas Tax Code §1.04(3) as it relates to mobile homes, recreational vehicles, and park model homes and the requirements of Texas Tax Code §11.14 as it relates to the requirements for taxing tangible personal property not producing income.

Dear General Cornyn:

I am writing to request that your office issue an opinion letter interpreting Texas Tax Code § 1.04(3), which defines the term "improvements" for purposes of determining whether a structure on land should be classified as an improvement and subject to tax as real property. Additionally, I would request an opinion on § 11.14 of the Texas Tax Code if a tax has been levied without compliance with the requirements of this section.

In December 1999, your office issued Opinion Letter JC-0150 regarding whether an ad valorem tax may be assessed on travel trailers. In that opinion letter, your office concluded that travel trailers may be taxable as personalty. JC-0150 at 3. While the letter carefully noted that the question of whether such trailers had become improvements to the land, and were therefore taxable as real property, was a factual determination best left to the local appraisal district, the letter did leave some questions unanswered. First, the interpretation of the definition of improvement in the Texas Tax Code §1.04(3) is ambiguous. A careful reading of the Tax Code suggests that there are two separate tests for determining if a structure should be considered an improvement. Specifically, §1.04(3)(A) seems to apply to those structures which are not transportable and requires that these structures be "erected on or affixed to land; . . .". By contrast, § 1.04(3)(B) specifically pertains to transportable structures and would consider these to be improvements only "if the owner of the structure owns the land on which it is located . . ." It appears that the Texas Tax Code create two separate tests for improvements--one for structures



which are non-transportable and one for transportable structures. I have attached a letter brief drafted by my general counsel on this issue for your information. In that brief, he concludes that the Texas Tax Code creates two separate tests and that travel trailers, which are transportable structures by nature, can only be considered improvements if the same person owns the land and the transportable structure.

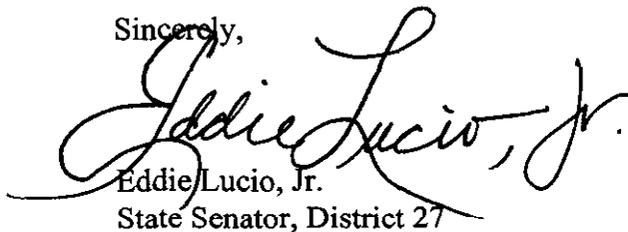
The second issue on which I would request further clarification involves Texas Tax Code §11.14. Subsection (c) of this section of the Tax Code reads as follows:

The governing body of a taxing unit, by resolution or order, depending upon the method prescribed by law for official action by that governing body, may provide for taxation of tangible personal property exempted under Subsection(a). . . .

Subsection (e) of this section requires the governing body of the political subdivision which is attempting to tax this personal property to give notice and hold a public hearing. What are the consequences of the failure of a governing body of a political subdivision to give proper notice if it then proceeds to collect the tax?

Thank you for your prompt attention to this matter. If there is anything I can do to assist you in this process, please feel free to contact me.

Sincerely,



Eddie Lucio, Jr.
State Senator, District 27