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RQ-0011-GA

December 18, 2002

Ms. Susan Gusky
Division Chief, Opinions Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711

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OPINION COMMITTEE

FILE # ML-42870-02
I.D. # 042938

Dear Ms. Gusky,

Enclosed is further information regarding the City of Rosenberg's request per your letter dated November 12, 2002.

If you have any further questions, please contact Steve Foster in my committee office at (512) 463-0345.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Armbrister".

Kenneth Armbrister

ROSS, BANKS, MAY, CRON & CAVIN, P.C.

Attorneys at Law
www.rossbanks.com

Steven L. Weathered
Shareholder

vmail: (713) 623-4253 ext. 4059

November 25, 2002

Via Fax 1/512-475-2015

Mr. Steve Foster, General Counsel
Senate Committee on Criminal Justice
Post Office Box 12068
335 Sam Houston Building
Austin, TX 78711

Re: SALES TAX REBATE FOR ECONOMIC DEVELOPMENT

Dear Mr. Foster:

Pursuant to your request, please allow this to supplement the letter of Lynda Eiche, the Director of Finance and Administration for the City of Rosenberg, dated October 29, 2002 in relation to the issue of rebate of sales tax for purposes of economic development. Some municipalities have adopted the practice of providing financial incentives for economic development by rebating sales tax to retain and/or attract certain businesses apparently under the guise of Texas Constitution Article III, Section 52, 52-a and Chapter 380 of the Texas Local Government Code. The sales tax rebate practice is often joined with the use of a purchasing company, which has negotiated a sales tax rebate from the subject municipality where it is located, despite the fact that the inventory or place of sale may be located in another municipality. The joining of these two practices has a whipsaw effect, depriving the municipality where the actual inventory/place of sale from recoupment of the cost of municipal services expended that supported the production of the inventory.

Request is made for an opinion on the following:

For purposes of Article III, Section 55, is the rebate of sales tax a release or extinguishment of "the indebtedness, liability, or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein" which is constitutionally prohibited by the Legislature?

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Prior Attorney General opinions reflect a basic policy that all property must be taxed equally and uniformly. See JM-865 ("Among the principles of taxation fixed in the constitution in accordance with which such unspecified objects or subjects of taxation may be taxed are: that all property must be taxed and that taxation must be equal and uniform, Tex.Const. art. VIII, s 1 and that "the legislature may, by general laws, exempt from taxation" a specified list of properties, Tex.Const. art. VIII, s 2(a). Section 2(a) also provides that "all laws exempting property from taxation mentioned in this section shall be null and void.") The referenced opinion, reflecting that there can be no enlargement of exemptions not expressly stated in the Constitution, concluded that neither a county or home rule municipality has the authority to grant an exception for religious, charitable, or educational purposes from the hotel occupancy tax absent constitutional and statutory authority.

LO 95-090 construed 380.001 Texas Local Government Code in relation to Article III, Section 55 to determine whether a municipality could execute a tax abatement agreement to abate taxpayer's delinquent taxes.

Unless another constitutional provision authorizes a municipality to abate delinquent taxes, therefore, we may not construe section 380.001(a) of the Local Government Code or chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act (the "act"), to permit the abatement of delinquent taxes. We find no such constitutional provision.

Because article III, section 52-a does not expressly make an exception to article III, section 55 of the constitution, however, we conclude here that section 380.001(a) of the Local Government Code does not authorize a municipality, as part of an economic development program, to agree to abate a taxpayer's delinquent taxes.

In our opinion, section 312.204 of the Tax Code permits the abatement of only ad valorem taxes to be assessed in the future. To construe the statute otherwise would, as we have suggested, violate article III, section 55 of the constitution. We therefore conclude that neither Local Government Code section 380.001 nor Tax Code section 312.204 authorizes a municipality to abate delinquent taxes owed by a taxpayer who participates in the municipality's enterprise zone. Moreover, article III, section 55 of the Texas Constitution expressly forbids the abatement of delinquent taxes.

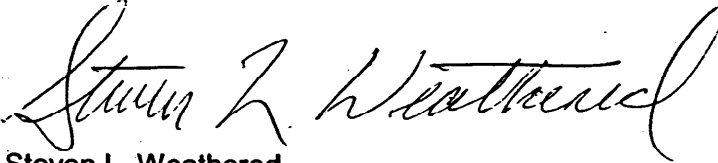
LO 96-099 followed, considering whether a municipality could reduce the amount of delinquent taxes due on real property due to serious environmental concerns. Again the Attorney General concluded that the Constitution forbids it.

Article III, section 55 of the Texas Constitution forbids the legislature to release or extinguish, or to authorize the release or extinguishing of, all or part of any person's indebtedness, liability, or obligation to the state, a county, political subdivision, or municipal corporation. The legislature may, however, release, extinguish, or authorize the release or extinguishing of delinquent taxes that have been due for at least ten years. [footnote 11] Delinquent taxes are a liability for

purposes of article III, section 55. [footnote 12] Indeed, the section's principal purpose was to prevent the forgiveness of delinquent taxes. [footnote 13] Article III, section 55 pertains not only to what the legislature may do, but it also has been construed to forbid any county, political subdivision, or municipal corporation from unilaterally releasing or extinguishing an indebtedness or liability without constitutional authority.

The application of the cited opinions presents questions as to the accrual, categorization, and entitlement of sales taxes for municipal use. Serna v. H.E. Butts, 21 S.W.3rd 330 (Tex. Civ. App-San Antonio 2000, no writ) reflects that the vendor is required to collect sales taxes as the State's agent and holds them in trust for that purpose, but it appears unclear as to whether in light of the above opinions these taxes are subject to rebate for purposes of economic development pursuant to 380 Texas Local Government Code. Is retention of existing industry a "public purpose" as it is not specifically referenced in the subject statute? The grant or rebate of sales taxes to retain business would appear to be inconsistent with the policy of adding growth, new value, generating new jobs or additional new jobs under some circumstances. Additionally, what policy is mandated for compliance with the principal that taxes must be equal and uniform? Accordingly, request is made for an opinion for the questions posed. Thank you for your assistance.

Sincerely,



Steven L. Weathered
City Attorney
City of Rosenberg

SWL/jcb

Enclosure

G:SLW:2443-11:Letter:Steve Foster



SENATOR KEN ARMBRISTER
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FILE # ML-42870-02
I.D. # 42870

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OPINION COMMITTEE

October 30, 2002

Ms. Susan Gusky
Division Chief, Opinions Committee
Office of the Attorney General
P.O. Box 12548
Austin, TX 78711-2548

Dear Ms. Gusky,

I would appreciate an Attorney General's opinion regarding the forwarded information from the City of Rosenberg's Office of the Director of Finance and Administration.

Thank you in advance for the time and consideration for this request. If you have any questions, please call Steve Foster in my committee office at (512) 463-0345.

Sincerely,

A handwritten signature in cursive script that reads "Ken Armbrister".

Kenneth Armbrister



October 29, 2002

The Honorable Ken Armbrister
P. O. Box 12068
Capitol Station
Austin, TX 78711

Dear Senator Armbrister:

Thank you for speaking with us yesterday afternoon regarding our efforts to change the definition of "place of business" in the Texas Tax Code. Our goal is to do this in a manner that would eliminate a company's ability to change sites in an effort to avoid or intentionally divert the payment of local sales taxes.

The City of Rosenberg would like your help in asking for the Attorney General's opinion as to whether a City may abate a taxpayer's indebtedness of local sales taxes, using the following argument:

Because an entity's sales tax indebtedness occurs at the point of sale, a City is precluded from releasing that indebtedness because of Article III, Section 55 of the Texas Constitution.

Article III, Section 55 of the Texas Constitution reads that the Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any corporation or individual, to this State or to any county or defined subdivision thereof, or other municipal corporation therein, except delinquent taxes which have been due for a period of at least ten years.

Letter Opinion No. 96-099 states in part that "because Article III, Section 55 of the Texas Constitution precludes a governmental body from releasing, in whole or in part, a taxpayer's delinquent tax liability, we could not construe Tax Code chapters 33 or 312 or Local Government Code chapter 380 to authorize the municipality to abate delinquent taxes. [footnote 17] Moreover, we found no other constitutional provision that would authorize a municipality to abate delinquent taxes for economic development purposes. (AG96-099).

OFFICE OF THE DIRECTOR OF FINANCE AND ADMINISTRATION
Post Office Box 52x2110 Fourth Street Rosenberg, Texas 77471 x832/595-3369 xFax 832/595-3333

Senator Armbrister

October 29, 2002

- Page 2 -

Letter Opinion No. 95-090 states that "Unless another constitutional provision authorizes a municipality to abate delinquent taxes, therefore, we may not construe section 380.001(a) of the Local Government Code or chapter 312 of the Tax Code, the Property Redevelopment and Tax Abatement Act (the "act"), to permit the abatement of delinquent taxes. We find no such constitutional provision. (AG95-090)."

If you have any further questions regarding this request, please do not hesitate to call me at (832) 595-3369 or our City Attorney, Mr. Steve Weathered at (713) 542-2642.

Sincerely,



Lynda B. Eiche, CPA
Director of Finance and Administration

LBE/ch

cc: Jeff Braun, City Manager

OFFICE OF THE DIRECTOR OF FINANCE AND ADMINISTRATION
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