



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

February 8, 1957

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

Opinion No. WW-21

Re: Whether theatre is required to pay additional tax under Subdivision 22a of Article 7047, Vernon's Civil Statutes, as a result of the area in which the theatre is located being annexed to the city of Houston subsequent to payment of the annual tax at the beginning of the year.

Dear Mr. Calvert:

Your letter requests an interpretation of Article 7047, Subdivision 22a, Vernon's Civil Statutes, as applied to the following fact situation:

A theatre located outside the city limits of Houston on January 1st, 1957, paid the 1957 occupation tax levied by the aforesaid statute. On January 7, 1957, the city of Houston annexed the area including the theatre location.

Article 7047 provides: "There shall be levied. . . an annual occupation tax, which shall be paid annually in advance except when herein otherwise provided. . . as follows: . . .".

Subdivision 22a provides for a graduated tax on theatres ranging from Five Dollars to Seventy-five Dollars annually, depending upon the population of the city, town or village wherein they are located.

Your inquiry deals with whether the theatre in question may operate for the remainder of the year based upon its payment of the lower small town rate.

We think your question is answered in the language of the statute providing that the tax is payable "annually in advance". Although the Statute is not specific on the subject, we understand that your Department has for many years uniformly construed the statute to mean that the year involved is the calendar year. That being true, the tax accrues at the beginning of the year and is based upon the status of the theatre at that time. No further tax, regardless of changes during the year, would accrue until the next tax due date at the beginning of the following year. The Statute

Hon. Robert S. Calvert, page 2 (WW-21)

contains no authorization, express or implied, for the levying of an additional tax later in the year due to changing conditions.

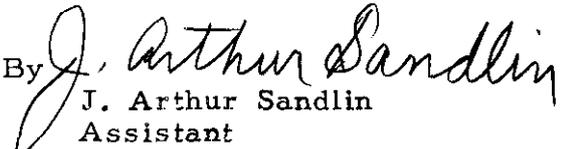
In Opinion No. 0-3009 this Department considered a contention that the occupation tax levied by Article 7047A-2 et seq. on coin operated machines be construed as a quarterly tax. This would have given relief to marble table operators who contended that they were being forced to pay a year's tax on a machine that would not last over three months. This opinion held that the tax was an annual, not a quarterly, tax, payable in advance. The effect of the holding was that an event occurring during the year, such as wearing out of the machines, would not alter the amount of the tax due for the year. We believe that our holding in the present opinion, that the amount of tax due at the beginning of the year will not be altered by the subsequent annexation proceedings, is in harmony with the holding in Opinion No. 0-3009.

SUMMARY

Article 7047, Subdivision 22a, Vernon's Civil Statutes, levies an occupation tax on theatres payable annually in advance. The tax is graduated, depending upon the size of the city, town or village, in which the theatre is located. A theatre located in an area adjacent to the city of Houston, paying the tax on January 1, 1957, may operate for the entire year under the tax rate applicable on the date aforesaid, despite the subsequent annexation of the area in question to said city on January 7, 1957, resulting in a higher population bracket.

Yours very truly,

WILL WILSON  
Attorney General

By   
J. Arthur Sandlin  
Assistant

APPROVED:

OPINION COMMITTEE  
H. Grady Chandler, Chairman

JAS:cs