



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WILL WILSON  
ATTORNEY GENERAL**

August 18, 1959

Honorable Jesse James  
State Treasurer  
Treasury Department  
State of Texas  
Austin, Texas

Opinion No. WW-688

Re: Whether a credit memo-  
randum invoice issued  
by the State Treasurer  
in 1954 may be allowed  
now as a credit against  
a purchase of cigarette  
stamps.

Dear Mr. James:

You have certified the following facts for opinion  
by this Department:

"In August, 1953, the Associated Grocers of San Antonio, Texas, purchased the assets of the Merchants Wholesale, Inc., of Kenedy, Texas. Included in the fixed assets of the Merchants Wholesale, Inc., was a Pitney-Bowes cigarette tax machine together with the tax meter. In this meter the gross amount of \$1,320.80 of unused tax (3,302 units or 33,020 impressions) was transferred or sold to Associated Grocers.

"On September 1, and September 30, 1953, we suggested to the Merchants Wholesale, to return the meter to us or to advise us if this meter was transferred to Associated Grocers. No reply was received to our letters nor was the meter returned to us at that time.

"On November 24, 1953, Mr. Lowell Gault, Auditor for the Cigarette Tax Division of the State Comptroller's Department, made a final audit of the Merchants Wholesale and advised us that the machine and the meter was transferred to Associated Grocers in San Antonio. Mr. Gault further advised that Associated Grocers would re-new the lease of the meter and would purchase a cigarette distributor's permit to use the meter. About two months later, Associated Grocers returned the meter to us with no instructions or advice concerning the meter.

"This Department held this meter intact until August 30, 1954, at which time we issued a credit memorandum invoice No. 40906 in the gross amount of \$1,320.80 and a net amount of \$1,281.80 covering the unused tax in the meter and Pitney-Bowes service man checked the meter out of service. The difference between these amounts is the discount allowed on the purchase of cigarette stamps or meter impressions.

"Since that time this credit of \$1,281.80 has been carried on our records and no advice or information was received from Associated Grocers until May 22, 1959. On that date a letter request was received seeking a refund for this unused cigarette tax.

"Since almost five years have passed since the credit memorandum invoice was issued, we respectfully request your opinion if this credit now may be allowed against a purchase of cigarette tax stamps."

Section 2a of the Cigarette Tax Act (Article 7047c-1, V.A.C.S.) empowers the Comptroller to authorize licensed cigarette distributors to evidence the payment of the cigarette tax by impression of "tax meter stamps". Unless otherwise specifically provided in the cigarette tax act, all provisions relating to cigarette tax stamps apply to "tax meter stamps."

In 1955, the Legislature raised the rates at which cigarettes were taxed. See Article 7047c-1, Sec. 2, and Sec. 2a. To facilitate the rate change the cigarette tax stamp board was directed to design and have printed or manufactured new cigarette tax stamps. Article 7047c-1, Sec. 3(a). It was further provided in Article 7047c-1, Sec. 3(c):

"The State Treasurer is hereby required to redeem at face value any unused cigarette tax stamps lawfully issued prior to such change in denomination and in the possession of any bona fide owner, by exchanging at face value cigarette tax stamps for cigarette tax stamps of the new denomination. After the effective date of this Act, every person having in his possession stamps of the old denomination shall send them to the Treasurer for exchange at face value for stamps of the new denomination. Such exchange shall be made within thirty (30) days after the effective date of this Act. . . .

After the expiration of thirty days from the effective date of this Act, stamps of the old denomination shall be void. . . ."

In view of the above quoted provision, it is obvious that your question must be answered in the negative. By allowing a credit for tax meter stamps issued prior to 1955 against a present purchase of cigarette tax stamps, your department would, in effect, be exchanging such stamps for stamps of the new denomination. Since old tax meter stamps are void, and since they were not exchanged within thirty days from the effective date of the rate change, your department has no authority to allow such a credit.

Though your specific question concerns your authority to give a credit for the tax meter stamps against a purchase of new cigarette tax stamps, you also state that on May 22, 1959, you received a letter from Associated Grocers seeking a refund of the unused cigarette tax. Since it is expressly provided that the tax meter stamps in question are void, it is implicit that no refund for such stamps could be made. However, there appears to be an additional reason why a refund is unauthorized. Sec. 3(1) of Art. 7047c-1, states:

" . . . Provided further, that the Treasurer shall be authorized to make refunds on unused stamps on unbroken sheets of not less than one hundred (100) stamps each to the person who purchased said stamps only when proof satisfactory to said Treasurer is furnished that any stamps upon which a refund is requested were properly purchased from said Treasurer and paid for by the person requesting such refund."

From the facts in your letter, it is obvious that the Associated Grocers cannot furnish proof that they personally purchased the stamps in question from the Treasurer. Consequently, a refund is not authorized under the act.

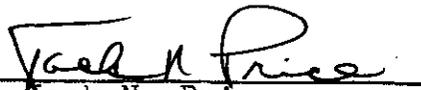
#### SUMMARY

Tax meter stamps issued prior to the effective date of the 1955 cigarette tax rate change became void thirty days after the effective date of such change; consequently, the stamps cannot be exchanged for or allowed as a credit against a present purchase of cigarette tax stamps, nor can any refund be made thereon. Further,

the State Treasurer is prohibited from making a refund on cigarette tax stamps to anyone other than the person who actually purchased such stamps from the Treasurer.

Yours very truly,

WILL WILSON  
Attorney General of Texas

By   
Jack N. Price  
Assistant

JNP:cm

APPROVED:

OPINION COMMITTEE:  
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REVIEWED FOR THE ATTORNEY GENERAL  
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