



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

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November 1, 1971

Hon. Jules Damiani, Jr.
Criminal District Attorney
405 County Courthouse
Galveston, Texas 77550

Opinion No. M-982

Re: May Sec. 3 of Art. 7258b,
V.C.S. be applied retro-
actively?

Dear Mr. Damiani:

We have received your request for an official opinion on the following question:

"Except as to litigation pending when it came into effect, does Article 7258b, Section 3, V.A.T.C.S., operate retrospectively, so that if a tax certificate showing no taxes due (whereas in fact taxes were due) was issued prior to the date such Article took effect, and under either Article 7258b or Article 7258a ~~repealed~~, V.A.T.C.S., the Tax-Assessor Collector might nevertheless issue upon request a cancellation certificate, relieving the current owner and the property of the tax liability, such owner not being the person in whose name the taxes became delinquent?"

Your question asks whether the procedure provided by Article 7258b is available for periods prior to the effective date of the statute. Our answer is Yes.

This Sec. 3, in its relevant portion, reads as follows:

"In the event a tax certificate is issued showing no taxes, interest, penalty, and costs due, when in fact taxes, interest, or penalties were due, and the owner of the land is not that person under whom the taxes, interest, penalty, and costs became delinquent, the tax collector

may issue, on request, a certificate relieving the property from liability and stipulating that the delinquent taxes, interest, penalty, and costs are thereafter the personal liability of the person under whom the taxes became delinquent. . . . Thereafter, this cancellation certificate shall be conclusive proof for all purposes that neither the land nor the present owner is liable for the delinquent taxes, interest, penalty, and costs."

Article 7258b is a remedial statute. It repealed and replaced Article 7258a which was very similar in nature and which had been expressly declared by two court decisions to be remedial and equitable in nature. International Paper Co. v. State, 380 S.W.2d 18 (Tex.Civ.App. 1964, error ref. n.r.e.), and Amerada Petroleum Corp. v. 1010.61 Acres of Land, 146 F.2d 99 (5th Cir. 1944). These factors amply support retroactive application of Section 3 and an affirmative answer to your question.

The presumption against retroactive application is not applicable under the circumstances here presented. See please: May v. Curry, 385 S.W.2d 603 (Tex.Civ.App. 1964, error ref. n.r.e.); Holt v. Wheeler, 301 S.W.2d 678 (Tex. Civ.App. 1957, error dism.); Falls v. Key, 278 S.W. 893 (Tex.Civ.App. 1925, error dism.); 52 Tex.Jur.2d 51, Statutes, Sec. 28; also 21 A.L.R.2d 1278, 1280-1282 and 107 A.L.R. 578, et.seq.

The only exclusion from the relief afforded concerns matters in litigation. Article 7258b, Sec. 6. Our holding allows all property owners who have relied upon tax certificates lawfully issued under both Articles 7258a and 7258b to relieve themselves from the claim and their property from the undisclosed tax lien against which they had used all the diligence that both the law and equity required of them. This purpose is stated by the Court in the International Paper Co. case, supra, wherein the Court held,

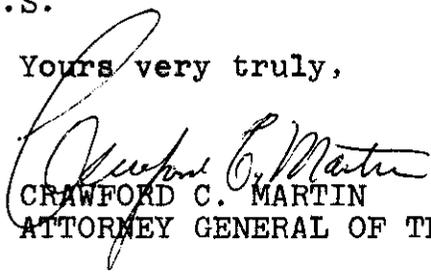
". . . It appears that Article 7258a is actually a remedial statute. It gives the citizens of Texas a conclusive right to believe in and rely upon the acts of their

officers. At the same time, it does not release or discharge anything except the tax lien. It gives the State the exclusive right to proceed against the Tax Collector and their bondsmen for the taxes, penalty, interest and costs. The purpose of the statute was to relieve the purchasers of property from the secret tax liens upon property for which they have purchased and paid, or obligated themselves to pay for. This relieves the purchaser of the responsibility of buying property and later having a tax lien forced upon the same and requiring him to pay off the tax lien in order to keep his property." (at p. 22).

S U M M A R Y

The provisions of Sec. 3 of Article 7258b, V.C.S. should be applied retrospectively to authorize issuance of the cancellation certificate therein authorized, and when authorized, to cover all tax certificates showing no taxes due which had been previously and lawfully issued under both Article 7258a V.C.S. [repealed], and Article 7258b, V.C.S.

Yours very truly,


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