



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

February 13, 1974

The Honorable Joe Resweber
County Attorney
Harris County Courthouse
Houston, Texas 77002

Opinion No. H- 229

Re: How should the penalty and interest, if any, be calculated on the additional tax due under the "rollback" provision of the Agricultural Use Amendment (Article 8, § 1-d) of the Texas Constitution?

Dear Mr. Resweber:

You have asked for an opinion of this office on the following question:

"How should the penalty and interest, if any, be calculated on the additional tax due under the 'rollback' provision of the Agricultural Use Amendment (Article 8, § 1-d Tex. Const.)?"

Article 8, § 1-d, of the Texas Constitution provides a partial tax exemption in connection with land use for agricultural purposes. Subsection (a) of this provision states:

"(a) All land owned by natural persons which is designated for agricultural use in accordance with the provisions of this Section shall be assessed for all tax purposes on the consideration of only those factors relative to such agricultural use. 'Agricultural use' means the raising of livestock or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit, which business is the primary occupation and source of income of the owner. "

Subsection (f), about which you are concerned, provides as follows:

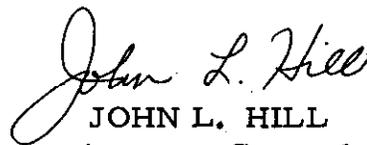
"(f) Each year during which the land is designated for agricultural use, the local tax assessor shall note on his records the valuation which would have been made had the land not qualified for such designation under this Section. If designated land is subsequently diverted to a purpose other than that of agricultural use, or is sold, the land shall be subject to an additional tax. The additional tax shall equal the difference between taxes paid or payable, hereunder, and the amount of tax payable for the preceding three years had the land been otherwise assessed."

In our opinion the additional tax contemplated by subsection (f) does not become due until the land is shown not to qualify for agricultural use taxation pursuant to Subsection (a), supra. Penalties and interest become due under Article 7336, V. T. C. S. only if the additional tax is not paid at that time.

SUMMARY

The additional tax provided for under Article 8, § 1-d(f), of the Texas Constitution does not accrue until the year in which the land is diverted to a non-agricultural use or is shown not to qualify for taxation pursuant to Article 8, § 1-d(a) above and is not subject to penalties and interest, unless there is a refusal to pay the additional tax at that time.

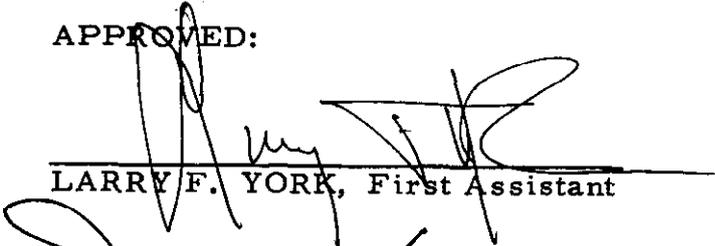
Yours very truly,



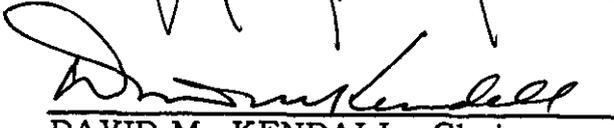
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APPROVED:



LARRY F. YORK, First Assistant



DAVID M. KENDALL, Chairman
Opinion Committee