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OPINION COMMITTEE



The Senate of the State of Texas

Jane Nelson

Senate District 12

April 12, 2017

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ID. # 48137

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P.O. BOX 12068  
CAPITOL BUILDING  
AUSTIN, TEXAS 78711  
512/463-0112  
FAX: 512/463-0923

DISTRICT OFFICE  
1225 S. MAIN STREET, SUITE 100  
GRAPEVINE, TEXAS 76051  
817/424-3446  
FAX: 817/488-6648

E-MAIL: jane.nelson@senate.texas.gov

RQ-0157-KP

Jennie Hoelscher, Chair  
Opinions Committee  
Office of the Attorney General  
P.O. Box 2548  
Austin, TX 78711-2548

Dear Ms. Hoelscher:

I submit this request for an Attorney General opinion pursuant to Section 402.042 of the Government Code on the following question: For the FY 18-19 biennium, would a delay in making each fiscal year deposit to the state highway fund under Article 8, Section 7-c(a) of the Texas Constitution until September of the following fiscal year violate that constitutional provision?

Article 8 Section 7-c(a) of the Texas Constitution states:

Subject to Subsections (d) and (e) of this section, in each state fiscal year, the comptroller of public accounts shall deposit to the credit of the state highway fund \$2.5 billion of the net revenue derived from the imposition of the state sales and use tax on the sale, storage, use or other consumption in this state of taxable items under Chapter 151, Tax Code, or its successor, that exceeds the first \$28 billion of that revenue coming into the treasury in that state fiscal year.

The Comptroller expressly informed me that it is not possible to calculate net revenue and remit the appropriate payment to the highway fund until after the close of the fiscal year. Attached is a letter from the Comptroller describing the conflict in the Constitution and the challenges this conflict poses, along with my letter to the Comptroller requesting his position in writing.

Is a strict interpretation of Article 8, section 7-c(a) required when it will be impossible to actually comply? Or may the Comptroller comply with that provision by making the payment as soon as it can be calculated? Because your answer will impact our decision-making in the appropriations process during these final weeks of session, I respectfully request an expedited response.

Very truly yours,

A handwritten signature in cursive script that reads "Jane Nelson".

Senator Jane Nelson

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E-MAIL: [jane.nelson@senate.texas.gov](mailto:jane.nelson@senate.texas.gov)



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April 11, 2017

The Honorable Glenn Hegar  
Comptroller of Public Accounts  
Lyndon B. Johnson Building  
111 East 17th Street  
Austin, Texas 78711

Dear Comptroller Hegar:

I respectfully request a written explanation of the complications we have discussed extensively regarding the transfer of sales tax in accordance with Proposition 7.

During several conversations, you indicated that it would not be possible to calculate net revenue until after the close of each fiscal year for the upcoming biennium as directed by Article 8 Section 7-c(a) of the Texas Constitution. Therefore, you indicated it would not be possible to comply with the constitutional provision requiring the sales tax transfer to the state highway fund within each fiscal year during the next biennium.

A resolution of this issue is paramount in order for the conference committee on Senate Bill 1 to make informed decision about our state budget. Given the limited timeframe, I would appreciate your prompt attention and look forward to receiving your written response. As always, I appreciate your leadership on behalf of all Texans.

Very truly yours,

A handwritten signature in cursive script that reads "Jane Nelson".

Senator Jane Nelson



April 12, 2017

The Honorable Jane Nelson  
Chair, Finance Committee  
Texas Senate  
Capitol Building, Room 1E.5  
Austin, Texas 78701

Dear Chair Nelson:

The following information is in response to your letter of April 11, 2017, requesting additional clarification regarding the transfer of sales tax to the State Highway Fund (SHF) from the General Revenue Fund (GR) as required by Article VIII, Section 7-c(a) of the Texas Constitution.

To assist the Legislature in its budget deliberations, our office has discussed a number of options for bridging potential gaps between available revenue and appropriations. All of these options entail either changes to statute, riders or amendments to the appropriation bill or other fiscal bills, or reassessments of assumptions or other updates to the Biennial Revenue Estimate (BRE).

Among the items discussed was potential clarification and analysis of what Article VIII, Section 7-c(a) of the Texas Constitution means for the timing of sales tax transfers to the SHF, especially in fiscal years 2018 and 2019 when projections suggest that sales tax revenue will not reach the \$30.5 billion threshold until the last month of the fiscal year.

In the conversations referenced in your letter, I identified a conflict in the constitutional provision that requires the transfer be made out of *net* revenue and where the same provision also appears to require that the transfer be made in the same fiscal year as the revenue was collected and deposited to GR.

As referenced above, the concept of net revenue is critical to this discussion. The calculation of net revenue plays an important part in our administration of the sales tax, most crucially as it relates to the monthly allocation of net local option sales taxes to units of local government from tax collections made in the previous month. Additional definitions of net revenue as a measure that can only be calculated from previous periods are enclosed.



The Honorable Jane Nelson  
April 12, 2017  
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One conclusion would be that any portion of sales tax revenue collected in the month of August that is earmarked for eventual transfer to the SHF would need to be transferred in September to substantially comply with the constitution and allow for actual net revenue fiscal year end calculations. That approach would be consistent with the recognized definitions of net revenue and historical monthly sales tax administration by this office.

I trust this information has been helpful. Please be assured that I stand ready to assist the Senate Bill 1 Conference Committee in any way possible.

Sincerely,



Glenn Hegar

Enclosure

cc: The Honorable John Zerwas, Chair, House Appropriations Committee



### **Definitions of Net Revenue**

- Tex. Const. Art. VIII, § 7-a refers to “net revenues remaining after payment of all refunds allowed by law and expenses of collection.”
- Tex. Const. Art. VIII, § 24 refers to “net revenues remaining after payment of all refunds allowed by law and expenses of collection from the tax.”
- Tex. Tax Code § 101.009 refers to net revenues as, “all revenues collected from the taxes imposed ... after deduction of the portion allocated for collection, enforcement, and administration purposes.”

### **Definition of Net**

- Tex. Const. Art. III, § 49-g defines “net” as “the amount of money that is equal to the difference between gross collections and refunds before the comptroller allocates the receipts as provided by law.”