



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2019

The Honorable Matthew A. Mills
Hood County Attorney
1200 West Pearl Street
Granbury, Texas 76048

Opinion No. KP-0239

Re: Authority of a county to refund penalties and interest paid by taxpayers in certain circumstances (RQ-0244-KP)

Dear Mr. Mills:

You ask about the authority of Hood County (the "County") to refund penalties and interest paid by some taxpayers for delinquent property taxes "upon proof that the county may have caused the confusion that led to the delinquencies."¹ You explain that, until 2017, the Hood County Appraisal District collected property taxes on behalf of the County as well as other local taxing entities, which resulted in a single tax bill being sent to property owners. *See* Request Letter at 1; *see also* TEX. TAX CODE § 6.24(b) (authorizing a commissioners court, with the approval of the county assessor-collector, to contract with an appraisal district for the assessment and collection of county taxes). You tell us that in 2017, the County's tax assessor-collector took over the collection of county property taxes, which "impacted the tax bills that went out in the latter part of 2017, to be paid by January 31." Request Letter at 1. You state that "[f]or a variety of reasons, the collection of county taxes was not as successful as hoped. There were a number of complaints from taxpayers about checks not being deposited, confusion while paying bills, and general complaints about having to pay two bills in two different locations." *Id.*² You tell us that in August of 2018, a number of taxpayers received delinquency notices from a private collections firm despite apparently never receiving a tax bill from the County. *See id.* In some cases, you tell us, the taxpayers had "paid the full bill (county, school, etc.) to the appraisal district on time, were given a refund of the county portion with no explanation" and the County later designated the county taxes as delinquent. *Id.* at 1–2. The volume of these complaints and the fact that they come from taxpayers with a history of timely payments, you state, makes "the commissioners court believe[] that these taxpayers should not have to pay penalties and interest on their delinquent bills." *Id.* at 2. However, you note that the Tax Code "does not allow failure to receive a bill to form an excuse for nonpayment" and that the Tax Code also prevents taxpayers from seeking a waiver of penalties and interest "once 181 days have elapsed since the tax became delinquent."

¹*See* Letter from Honorable Matthew A. Mills, Hood Cty. Att'y, to Honorable Ken Paxton, Tex. Att'y Gen. at 1 (Aug. 20, 2018), <https://www2.texasattorneygeneral.gov/opinion/requests-for-opinion-rqs> ("Request Letter").

²You state that in March of 2018, "the commissioners court signed an agreement with the approval of the Tax Assessor Collector to put the county's property tax collections back with the Hood County Appraisal District." *Id.*

Id. You question whether authority exists “for the county to provide relief to taxpayers for their penalties and interest if the county is satisfied that the county created much of the confusion in the first place.” *Id.*

Section 33.011 of the Tax Code governs the County’s authority to waive penalties and interest on a delinquent property tax. Relevant to the facts you present, subsection 33.011(a)(1) provides that “if an act or omission of an officer, employee, or agent of the taxing unit . . . caused or resulted in the taxpayer’s failure to pay the tax before delinquency,” the governing body of the taxing unit must waive penalties and may waive interest on the delinquent tax, provided that the tax is paid by “the 21st day after the date the taxpayer knows or should know of the delinquency.” TEX. TAX CODE § 33.011(a)(1); *see also id.* § 33.011(b) (providing that if a tax bill is returned undeliverable by the United States Postal Service “because of an act or omission . . . of the taxing unit” and another tax bill is not sent within a specified period, the taxing unit must waive both penalties and interest). In addition, subsection 33.011(a)(3) allows a taxing unit to waive penalties and interest on a delinquent tax if the taxpayer can show (1) attempted mail payment prior to the delinquency date; (2) mailing to an incorrect address that was previously the correct address, within one year of that change; and (3) payment of the tax by the 21st day the taxpayer knew or should have known of the delinquency. *See id.* § 33.011(a)(3). However, the taxing unit may not waive the penalties or interest under any aforementioned subsections without a written request “made before the 181st day after the delinquency date.” *Id.* § 33.011(d). You tell us that the “timing of the delinquency notices is such that a number of local taxpayers are only now finding out that the bills are delinquent, and 181 days have passed.” Request Letter at 2.

The Tax Code charges the assessor for each taxing unit with preparing and mailing a tax bill to each property owner listed on the tax roll. *See* TEX. TAX CODE § 31.01(a). The assessor must mail the tax bills “by October 1 or as soon thereafter as practicable.” *Id.* Among other things, the tax bill must include the tax amount, the due date, and the delinquency date. *See id.* § 31.01(c)(7). Taxes are generally “due on receipt of the tax bill and are delinquent if not paid before February 1.” *Id.* § 31.02(a). If, however, “the tax bill is mailed after January 10, the delinquency date provided by Section 31.02 of [the Tax Code] is postponed” to a certain date after mailing that would allow for timely payment, except in instances not relevant here.³ *Id.* § 31.04(a). In the event the delinquency date is postponed, the accrual of penalties and interest is likewise postponed. *Id.* § 31.04(e); *see also id.* § 33.01 (outlining the calculation method to determine the amount of penalties and interest). Thus, the mailing date of the tax bill controls the delinquency date, which, in turn, controls the date for the imposition of penalties and interest.

One court of appeals recognized the possibility under the postponed delinquency date provisions of section 31.04 that “if no tax bill is ever mailed to the taxpayer, then the taxes never become delinquent, and, thus, penalties and interest never accrue.” *Aldine Indep. Sch. Dist. v. Ogg*, 122 S.W.3d 257, 270 (Tex. App.—Houston [1st Dist.] 2003, no pet.). In its analysis, the court acknowledged subsection 31.01(g) of the Tax Code, which states that “failure to send or receive the tax bill . . . does not affect the validity of the tax, penalty, or interest, the due date, the existence of a tax lien, or any procedure instituted to collect a tax.” *Id.*; TEX. TAX CODE § 31.01(g).

³ “[T]he assessor who mails the bills shall notify the governing body of each taxing unit whose taxes are included in the bills of the postponement.” TEX. TAX CODE § 31.04(b).

Recognizing that “subsection 31.01(g) appears to conflict with subsection 31.04(e),” the court concluded that section 31.04 applies to postpone the delinquency date when “the taxing unit has the name and mailing address for the taxpayer, but either neglects to mail the tax bill or mails it late,” but that “section 31.04 will not apply in instances in which the taxing unit cannot send the tax bill because it does not have the taxpayer’s name or address.” *Aldine Indep. Sch. Dist.*, 122 S.W.3d at 270 (citing Texas Attorney General Opinion JM-1192); *see also* Tex. Att’y Gen. Op. No. JM-1192 (1990) at 7–8 (“We construe section 31.04 to govern only in instances in which a tax bill can be sent, but is mailed late; it has no application in an instance in which no tax bill can be sent because the name or address of the delinquent taxpayer is unknown.”).

You do not tell us whether the County mailed the tax bills—only that some taxpayers claim they never received tax bills from the County. Request Letter at 1. Whether the County, in fact, mailed tax bills to the taxpayers in question is a fact-specific inquiry that cannot be determined in the opinion process. Tex. Att’y Gen. Op. No. GA-0890 (2011) at 1. However, to the extent a taxing unit failed to mail a tax bill to the taxpayer despite the taxing unit’s possession of a mailing address, a court could conclude that the taxes are not yet delinquent, in which case the statutory deadline for submitting a written request for the waiver of fees and penalties has not yet passed. *See* TEX. TAX CODE § 33.011(d) (requiring a written request for the waiver of fees and penalties be submitted “before the 181st day *after the delinquency date*” (emphasis added)). In such a case, the County may waive penalties and interest upon receipt of a properly submitted request that complies with subsection 33.011(a)(1) of the Tax Code.

To the extent the County mailed a tax bill, the date of mailing establishes the date of delinquency, which determines whether the statutory period for filing a waiver request under subsection 33.011(d) has passed. Assuming the waiver period has passed, you raise article III, subsection 52(a) of the Texas Constitution as a potential barrier to the County providing taxpayers relief from the county’s general fund for amounts equivalent to the penalties and interest the taxpayers incurred. *See* Request Letter at 2. That provision prohibits the Legislature from authorizing a county to grant “public money or thing of value in aid of, or to any individual.” TEX. CONST. art. III, § 52(a). Whether any particular funds belong to the County, and are thus public funds subject to the prohibition of article III, section 52(a), depends on the nature of the particular funds. *See* Tex. Att’y Gen. Op. No. KP-0019 (2015) at 2 (concluding that restitution funds collected temporarily by the county clerk for eventual remittance to a victim were not funds belonging to the county). However, to the extent the County mailed the tax bills in question such that a waiver of penalties and interest under section 33.011 is foreclosed, article III, subsection 52(a) would likely preclude the County from reimbursing taxpayers from its general fund for the amount of the penalties and interest. If the County failed to mail the tax bills such that the taxes never became delinquent, then the penalties and interest never accrued and the funds remitted were never the property of the County. Article III, subsection 52(a) does not bar a refund of money not belonging to the County.

S U M M A R Y

Subsections 33.011(a)(1), (a)(3), and (d) of the Tax Code permit a taxing unit under some circumstances to waive penalties and interest charged on delinquent taxes based on an act or omission of the taxing unit, or a formerly-correct address for payment, if certain requirements are met and the taxing unit receives a timely submitted written request for the waiver.

To the extent Hood County failed to mail a tax bill despite the County's possession of the taxpayer's mailing address, a court could conclude that the taxes are not yet delinquent, in which case the statutory deadline in subsection 33.011(d) for submitting the waiver request has not passed. To the extent Hood County mailed the tax bills in question such that a waiver of penalties and interest under section 33.011 is foreclosed, article III, subsection 52(a) of the Texas Constitution likely precludes the County from reimbursing taxpayers from its general fund for the amount of the penalties and interest.

Very truly yours,



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