



# Public Law Report

FEBRUARY 2010

## Time to Start Thinking About Campaign Finance and What that Phrase Means For Local Election Candidates!

BY REGINA D. ADAMS

The May 2010 Election cycle is right around the corner, and it is time for candidates to start turning in their Applications for Place on Ballot (the "Application") (due March 8, 2010 by 5 p.m.). In conjunction with filing the Applications, candidates are also responsible for filing various campaign finance forms. This article serves to provide candidates with insight as to who should fill out which forms and when they should be filed.

### Appointment of a Campaign Treasurer

When you receive the Application packet, in addition to the Application itself, you will also find the Campaign Treasurer Appointment form. This form must be filed with the governmental entity with whom the Application is filed. A campaign treasurer must be appointed, even if the candidate appoints himself/herself.

### Modified Campaign Reporting Form

The Modified Campaign Reporting Form is actually the second page of the Campaign Treasurer Application form. This form should be completed if a candidate intends to receive or spend \$500 or less on his/her campaign. It is a very short form, which only requires printing and signing one's name and filling in the election year. Most water district director candidates complete this form because it is a rare situation in which such a candidate would need to receive or spend more than \$500.

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## How To Save By Spending

BY JOSHUA W. GOLDEN

Governments pay for public improvement projects in many ways. However, governmental entities with authority to issue bonds finance public projects with tax-exempt bonds traditionally. In Texas, water districts usually must get consent from the Texas Commission on Environmental Quality ("TCEQ") before issuing bonds or using bond proceeds to pay for public projects. Once bonds are issued, the proceeds from the bonds are used to pay the costs of issuing the bonds, land and property purchases, engineering fees related to the projects, construction costs, and other related administrative charges.

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## Miscellaneous Gross Receipts Tax – Are You Entitled To A Refund?

BY JOLIE S. LENZ

*What is the Miscellaneous Gross Receipts Tax?*

*Who should be paying it and who should not?*

*How do you determine whether you are entitled to a refund?*

After reviewing the answers to the above three (3) questions in this article, you may find that you are entitled to a refund from your electric company or, as referred to in the Texas Tax Code, "retail electric provider", whether it is a residential or business account.

The Miscellaneous Gross Receipts Tax is a tax imposed by the State of Texas pursuant to Section 182.022 of the Texas Tax Code on each utility company located in an *incorporated* city or town having a population greater than 1,000, according to the last federal census (which currently is the 2000 Census). A utility company includes retail electric providers making local sales to customers located in such an *incorporated* city or town. The tax rate is determined by the size of the *incorporated* city or town. Please see the following table:

<i>Incorporated City or Town Population</i>	<i>Tax Rate</i>
More than 1,000, but less than 2,500	0.581%
2,500 or more, but less than 10,000	1.070%
10,000 or more	1.997%

The retail electric providers (a "REP" or "REPs") are then allowed to pass this Miscellaneous Gross Receipts Tax through to you, the consumer.

However, often, the REPs are passing this Miscellaneous Gross Receipts Tax (this "Tax") through to consumers who do not live within the boundaries of an incorporated city or town. This occurs because most REPs do not determine whether their customers are located in an incorporated city or town and just pass this Tax through to all customers, regardless of geographical location.

As you may have guessed, the key criterion is whether you are located in an *incorporated* city or town or, in other words, within a city limits. If you *are* located in an incorporated city or town, your REP *can* pass this Tax through to you. If you *are not* located in an incorporated city or town, but rather in an unincorporated area of a county, your REP *cannot* pass this Tax through to you. If your REP has incorrectly passed this tax through to you, you are entitled to a refund of the full amount of this Tax that you have paid to your REP for at least the last

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## Local Election Candidates

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Additionally, it is the only campaign finance form that needs to be completed during the election cycle if you actually spend or receive less than \$500.

### **Candidate/Officeholder Campaign Finance Report**

If a candidate anticipates receiving or spending more than \$500, then he or she must complete the Candidate/Officeholder Campaign Finance Report. This form must be completed 30 days prior to Election Day, then again eight (8) days prior to Election Day. This form must also be updated semiannually on January 15 and July 15. It should be completed if a candidate completed the Modified Campaign Reporting Form and then spends or receives more than \$500. Officeholders who meet the \$500 threshold, must complete this form within 15 days after they appoint their treasurer. A final report will also have to be filed. These forms can be very time-consuming, and diligent records of campaign contributions must be kept by the candidate.

### **Code of Fair Campaign Practices**

Every candidate is encouraged by the Texas Ethics Commission to subscribe to the Code of Fair Campaign Practices (the "Code"). Adherence to the Code is voluntary, but always encouraged. The Code consists of the basic principles of decency, honesty and fair play in campaign practices. The Code form may be filed at the same time as the Campaign Treasurer Appointment Form.

It is important to note that the candidate and/or officeholder bears sole responsibility for completing and filing these forms as necessary.

Please feel free to contact our office if you have any questions regarding completing campaign finance forms, and for additional details, I highly recommend the Texas Ethics Commission website, <http://www.ethics.state.tx.us/>.

*Ms. Adams is an Associate with Johnson Radcliffe Petrov & Bobbitt PLLC and specializes in public law, public finance, real estate development, election law and employment law.*

## In The News...

Regina Adams recently participated in an in-house/outside counsel panel discussion at the Texas Women Lawyers continuing legal education seminar "Artful Intelligence" on Friday, February 19, 2010. Ms Adams was then reelected to a second term as Treasurer of the Board of Directors of TWL. ([www.texaswomenlawyers.org](http://www.texaswomenlawyers.org))

Ms. Adams also presented "Is It Election Time Already?: Your Guide Through the May 2010 Election" at the Association of Water Board Directors Texas Mid-Winter Conference in Dallas, Texas in January 2010. ([www.awbd-tx.org](http://www.awbd-tx.org))

Ms. Adams was recently appointed to the Executive Committee of the Greens Bayou Corridor Coalition. ([www.greensbayou.org](http://www.greensbayou.org))

## Bond Proceeds

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But what happens if bond proceeds remain in the district's coffers after all the projects for which the bonds were issued have been completed and paid? This may happen more often than you think. Because bonds are issued based upon cost estimates given before bonds are issued, rather than exact amounts, there is a good chance that excess unused bond proceeds will remain. The TCEQ refers to these excess dollars as "surplus funds". Normally, water districts must request consent from the TCEQ for a "change in use" to spend surplus funds for purposes other than the projects for which they were originally approved. While most water board directors are likely familiar with this concept, many may be unaware of circumstances in which TCEQ consent is not required. Specifically, districts with no-growth debt service tax rates of \$2.00 per \$100 of assessed valuation or less could find themselves in a favorable position.

The TCEQ's rules on the use of surplus funds offer these qualifying districts several opportunities to access their surplus funds more quickly and efficiently. For example, section 293.83 of the Texas Administrative Code provides that qualifying districts may use surplus funds for improvements necessary to serve development within the district without TCEQ approval for the following purposes:

- (A) rehabilitation or maintenance of facilities previously approved by the TCEQ for funding and owned by the district if the scope of the originally approved project has not changed;
- (B) engineering and construction costs associated with constructing water plant or wastewater treatment plant improvements located on the plant site, including storage facilities to meet project needs within the district's boundaries;
- (C) pump stations and force mains located within the boundaries of the district which directly connect the district's wastewater system to a regional plant; or
- (D) alternate water supply interconnects between two (2) or more districts.

However, any district contemplating the use of surplus funds must still obtain all the necessary approvals from other governmental agencies, submit copies of those approvals to the TCEQ's executive director and the appropriate field office, and report expenditures of all surplus funds in their annual audit report requesting consent from TCEQ. This procedure for spending surplus funds is faster and more efficient. In financial terms, speed and efficiency mean money savings!

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# Gross Receipts

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four (4) years. Of course, going forward, your REP should remove this Tax from your electric bill.

The amount of any refund to which you may be entitled is directly related to the amount of your electric bill because this Tax is a percentage of your total electricity cost. For example, if your REP has been incorrectly charging or passing this Tax through to you, and your average bill has been \$400/month for four (4) years, your refund could be in a range of \$350.00 - \$400.00. However, if you are operating a small business, your refund could be substantially more. For example, if the average electric bill for your small business has been \$2,000/month for four (4) years, your refund could be in a range of \$1,500 - \$2,000. The refund scenarios and amounts described in this paragraph are very general examples, calculated at the highest tax rate over four (4) years and are designed to provide very general information with regard to potential refunds. To determine the exact refund to which you may be entitled, you must review each of your electric bills to determine the amount of this Tax actually passed through or charged by your REP.

Follow the steps below to see if you are entitled to, and to obtain, a refund from your REP:

Step 1: Determine whether you are in an unincorporated area of a county. To assist you in this, consider the following:

- Who provides you water? If it is a city, then you most likely are in an incorporated city or town and will *not* be entitled to a refund. If it is a municipal utility district (MUD) or other special district, then you most likely are in an unincorporated area of a county and may be entitled to a refund. This criterion will not be absolutely determinative, but is a good place to start.
- If you have a Houston address or live in Harris County, the City of Houston has an online form that you can complete to determine whether your home or business is located within the City of Houston's incorporated boundaries or city limits. Please use the following link, <http://www.houstontx.gov/planning/index.html>, and then click on the button entitled "Online Address Info Application" (the last button under "Welcome to the Planning and Development Department") and follow the online instructions.
- If you have a Conroe address or live in Montgomery County, the City of Conroe has a map of its City Limits on its website. It is not as easy as the City of Houston's online form, but you should be able to determine whether your

home or business is located within the City of Conroe's incorporated boundaries or city limits. Please use the following link, <http://www.cityofconroe.org/content/view/357/504/1/1/>, and then click on the button entitled "City Limits Map".

Obviously, I cannot provide a link for every city in Texas with a population of more than 1,000. However, if you go to a particular city's website or contact that city's Planning Department, you should be able to determine whether you are located within that city's incorporated boundaries or city limits.

Step 2: Once you have determined that you are not located within a city's incorporated boundaries, or city limits, determine if your REP is passing this Tax through to you. To do this, you will need to review your electric bill. You should look for a line item (see inset) called one of the following: Gross Receipts Tax

Reimbursement, Miscellaneous Gross Tax Receipts Tax Reimbursement, Gross Receipts Tax, GRT, Miscellaneous Gross Receipts Tax, Utility Gross Receipts Tax, or Utility GRT. If you do not find such a line item, but find a line item called Miscellaneous Tax or Taxes, Miscellaneous Charges or some other broad description of taxes, charges or fees, contact your REP and request a line item breakdown of those taxes, charges or fees. Your REP must provide you with this breakdown. You should review each of your electric bills for at least the last four (4) years to determine the exact amount of this Tax passed through to you by your REP.

Step 3: Once you have determined that you have been incorrectly charged this Tax and the amount of such charged Tax, contact your REP to request your refund. Start with the REP's customer service department, but be prepared to speak with many customer service representatives and to work your way up the supervisory pyramid. Be prepared to request the refund in writing and to provide proof that you are located outside an incorporated city or town, whether it be from information obtained from a city's website or another source.

Step 4: If your REP fails to cooperate or give you your refund, contact the office of Susan Combs, the Texas Comptroller of Public Accounts, toll free at (800) 531-5441, and request their assistance in obtaining your refund.

If you need further information or assistance, please call or e-mail me at [jlenz@publiclaw.com](mailto:jlenz@publiclaw.com) or 713.237.1221.

*Ms. Lenz is an Associate with Johnson Radcliffe Petrov & Bobbitt PLLC and specializes in banking and real estate.*

**INSET**

BILL DATE: Apr 09, 2009  
DUE DATE: Apr 27, 2009  
AMOUNT DUE: \$357.32

**ELECTRICITY ACCOUNT DETAILS**

SERVICE PERIOD: From Mar 05, 2009 To Apr 03, 2009		BILLING DAYS: 29			
Meter #	Prior Read	Current Read	Difference	Multiplier	Usage
89261		91287 (actual)	2026.00	1.00	2026.00 kWh
<b>Previous Actual Balance</b>					<b>\$394.92</b>
Payment Mar 31, 2009 Thank you					\$394.92 CR
<b>Balance</b>					<b>\$0.00</b>
<b>Current Charges</b>					
Monthly Customer Charge					\$5.00
Consumption Charges @ \$0.172 / kWh					\$348.48
TDSP Charges					
* TDSP Advanced Metering Cost Recovery Factor					\$3.24
Gross Receipts Tax					\$0.60
<b>Total Current Charges</b>					<b>\$357.32</b>
Your contract rate for this period was \$0.172 / kWh					
<b>Account Balance</b>					<b>\$357.32</b>
<b>AMOUNT DUE IF PAYMENT RECEIVED ON OR BEFORE Apr 27, 2009</b>					<b>\$357.32</b>
<b>AMOUNT DUE IF PAYMENT RECEIVED AFTER Apr 27, 2009</b>					<b>\$375.19</b>

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*PLEASE CALL 713.237.1221 OR E-MAIL [JRPB@PUBLICLAW.COM](mailto:JRPB@PUBLICLAW.COM) WITH REQUESTS FOR MORE INFORMATION, COMMENTS, ADDRESS UPDATES OR CORRECTIONS.*

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JOHNSON RADCLIFFE PETROV & BOBBITT PLLC PROVIDES COUNSEL PRIMARILY TO GOVERNMENT ENTITIES, INCLUDING MUNICIPALITIES, PUBLIC NON-PROFIT CORPORATIONS AND SPECIAL DISTRICTS, WATER SUPPLY CORPORATIONS AND RELATED REAL ESTATE INTERESTS, DEVELOPERS, AND NON-PROFIT CORPORATIONS WITH A VARIETY OF NEEDS, RANGING FROM PUBLIC FINANCE TO CONTRACT NEGOTIATION, ELECTIONS AND ADMINISTRATIVE PROCEEDINGS. THE DIVERSE EXPERIENCE OF THE FIRM'S ATTORNEYS IN REGULATORY, ENVIRONMENTAL, REAL ESTATE DEVELOPMENT AND FINANCE MATTERS, OFFERS THE ABILITY TO MEET THE VARIED NEEDS OF SUCH CLIENTS. THE ARTICLES IN THIS PUBLICATION ARE NOT INTENDED TO PROVIDE SPECIFIC LEGAL ADVICE FOR ANY INDIVIDUAL SITUATION. RATHER, THEY ARE INTENDED AS GENERAL INFORMATION ONLY. FOR INDIVIDUAL LEGAL ADVICE, PLEASE CONTACT JOHNSON RADCLIFFE PETROV & BOBBITT PLLC OR ANOTHER PROFESSIONAL ADVISOR.

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## Community Outreach

During the 2009 holiday season, rather than exchange gifts among themselves, the employees of Johnson Radcliffe Petrov & Bobbitt PLLC ("JRPB") decided to channel their resources in a way that would have a more meaningful impact on someone's life by partnering with Catholic Charities of Houston to sponsor senior citizens in the Galveston area which, as we all know, was decimated by Hurricane Ike. Catholic Charities told us that frequently senior citizens must choose between paying their light bill and buying medicine or other bare necessities.

As a result, we adopted 25 seniors to whom we had the wonderful opportunity to give a few essentials during the holiday season. Each of our employees adopted a senior and purchased items such as blankets, gloves, hats, scarves and gift cards. JRPB added socks, soap, toiletries and other items to each senior's gift bag.

In addition, we approached the CVS Pharmacy located in our building to see if we could purchase items from them at a discount, but instead received a generous donation, which allowed us to give even more to our seniors.



## Did you know...

JRPB's Managing Member, Ross Radcliffe, was a high school mathematics teacher for nine (9) years prior to starting law school. Graduating from Eastern Michigan University with a major in mathematics and a minor in economics, Mr. Radcliffe taught four (4) years in Michigan before moving to Texas. From 1981 to 1986 he taught college-level Calculus at Klein Forest High School in Spring, Texas. Mr. Radcliffe believes his teaching experience has been an asset in his law practice, as many have said he explains legal terms and issues in easily understood language. So other than asking him to explain the difference between a municipal utility district and a fresh water supply district, feel free to ask him if Newton or Leibniz contributed more to the study of differential equations.