

IN RE: Gasoline tax is legal/enforceable on tractors and maintainers owned by townships, Counties and contractors.

7805 R3, Mo. 1929

March 3, 1933

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Hon. J. B. McGuffin,
Prosecuting Attorney,
Lawrence County,
Mount Vernon, Missouri.

Dear Sir:-

Answering your letter of February 21st, relative to the State collecting 2¢ a gallon on gasoline tax on motor vehicles particularly on road "tractors" and "maintainers", will say that a statute should be construed so as to carry out the intention of the Legislature and I think especially so if adopted by a referendum vote of the people, and if not plainly unconstitutional.

Section 7795 says,

"Every distributor shall * * * pay to the State treasurer an amount equal to two (2¢) cents for each gallon of motor vehicle fuels refined, manufactured, produced or compounded by such distributor and sold by him in this state, or shipped, transported or imported by such distributor into and distributed or sold by him within this state, during such year."

To the same effect is Section 7814.

Then comes the exceptions under Section 7805, which you will note includes gas for "stationary gas engines, FARM tractors, motor boats * * * fuels for cleaning, dyeing and other commercial use of same, or fuels * * * for any purpose whatever except in motor vehicles, etc." Then this section tells how these exceptional users may obtain a refund from the State by proper affidavit if attended to within ninety days.

You will note the strong exception of the word "farm tractors" which by inference would exclude other tractors.

In 1927 Attorney General Gentry wrote an opinion in which he said,

"I am, therefore, of the opinion and have heretofore held that the State of Missouri, counties of Missouri, the cities and towns of Missouri, all the local subdivisions of Missouri and all the state institutions are subject indirectly to the gasoline tax where the gasoline is to be used to propel a motor vehicle over the public highways of this State."

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And before and after that his, (Gentry) opinions were practically the same.

AA number of Attorney-General Shartel's opinions were to the same effect saying in one opinion (January 1931),

"The department (this) has uniformly held that gasoline so used (road tractors while engaged in work on the county roads) is subject to the tax. It has also held that gasoline used in tractors and other machinery of contractors doing work upon the highways is subject to the tax."

This being the ruling (of this department) on these statutes for so many years it would seem to be binding.

The Supreme Court has said,

"* * *Where such a statute as this has been interpreted by those * * * whose duty it is to enforce it, and their construction has been acted upon for any considerable time due regard should be paid to such construction"

Benanti vs. Security Ins. Co., 27 S.W. (2d) 1.c. 71.

See also Ross vs. Railway Co. 111 Mo. 18.

"The statutes of the state are presumably constitutional and their unconstitutionality must appear beyond reasonable doubt before they will be nullified as unconstitutional. State v. Scullin, etc., Co., 268 Mo. 178, 186 S. W. 1007, Ann. Cas. 1918E, 620; Forgrave v. Buchanan County, 282 Mo. 599, 222 S. W. 755. The Courts will not make them unconstitutional by importing words into them by implication."

Washington Tp. Road Dist.No.1 v. Robbins, 262 S.W. 1.c. 47.

From the foregoing rulings and authorities we are convinced that it was not the intention of the Legislature to except road tractors and maintainers from the payment of this 2¢ g gallon tax and this opinion is strengthened from the further fact that in Section 7805 where a refund is permitted for certain exceptional users, the term FARM tractors is expressly mentioned whereas it could have been readily put in if desired by the Legislature, farm and road tractors and maintainers engaged in the uses you mentioned in your letter.

Furthermore, three Legislatures have been in Session since this construction was promulgated and none of them saw fit to make a change in the law as so construed.

Yours very truly



GEO. B. STROTHER
Assistant Attorney General

GBS/mh

APPROVED:

ROY McKITTRICK
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