

NOTIFICATION: Federal Emergency Relief Administration exempt from gasoline tax.

GASOLINE TAX;

December 20, 1934. 12-21



Mr. H. H. Talbot,
Missouri Relief & Reconstruction
Commission,
Jefferson City, Missouri

Dear Sir:

I am in receipt of a communication from your office reading as follows:

"We have, as a part of the Commission, a department called the Relief Commodities Division. This department distributes the relief commodities throughout the state, and to facilitate the handling of these commodities, we recently purchased ten trucks. You understand that the commodities which this department distributes are food and clothing, given to families on the relief rolls. The commodities are sent in to us by the Federal Government at Washington, or are purchased from monies sent in by the Federal Government.

The following is an extract from a letter received from Washington, dated November 17, signed by Wm. L. Nunn, Director of Commodity Distribution:

'Now, with regard to exemption from payment of State and local taxes, this is a matter which must be determined in accordance with the laws of the particular State, and the Attorney General or Head of the Taxing Bureau should be consulted. Every effort should be made to avoid the payment of such taxes on the ground that the Relief Administrations are engaged in the exercise of a Governmental function in order that relief funds may be used for the administering of relief and be not diverted to other purposes.'

Will you kindly give me in writing your decision as to whether this department is exempt the State tax. You of course understand that these trucks move only relief commodities and nothing else."

From subsequent conversations it is my understanding that these trucks were purchased by monies supplied wholly by the Federal Government, and that the funds to meet the operating expenses thereof, including the purchase of gasoline, are likewise wholly Federal funds. It is apparent from the foregoing that the commodities transported and distributed are 100% relief commodities and are likewise supplied by the Federal Government.

Your entire program is based upon the Federal Emergency Relief Act of 1933. This is found at 15 U.S.C.A. 721 et seq. The opening section of this act is as follows:

"The Congress hereby declares that the present economic depression has created a serious emergency, due to widespread unemployment and increasing inadequacy of State and local relief funds, resulting in the existing or threatened deprivation of a considerable number of families and individuals of the necessities of life, and making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people."

Other provisions of this act allocate \$500,000,000 to the Federal Emergency Relief Administration, provide for the appointment of an administrator who in turn is authorized to appoint and employ such other officers and employees necessary. By Section 723, Subdivision B, it is provided:

"The Administrator may, under rules and regulations prescribed by the President, assume control of the administration in any State or States where, in his judgment, more effective and efficient cooperation between the State and Federal authorities may thereby be secured in carrying out the purposes of this chapter."

Other sections provide for grants for the relief of hardship and suffering caused by unemployment, in the form of money, service, materials and commodities; the conditions under which the grants are to be made or application thereof; the contents of the application

and provisions for reports and investigations. A careful reading of this act shows conclusively that while the term "grant" is used in reference to payments made to the States, that at all times the Federal Government retains control, supervision, regulation and direction of the entire program. By the provisions of the declaration of the emergency, it is clear that the Government entered into this program under its general governmental powers and is proceeding to conduct the same as a part and parcel of the general responsibility that the Government owes to its people to safeguard the health and welfare of the citizenry. That being the case we must consider the Emergency Relief Administration as a part and parcel of the government itself, and grant to it the same privileges and immunities which are extended to the other branches of our Federal Government.

This specific instance has not been passed on in this State by any Court, and a review of the decisions have indicated that in only one State has this problem reached a court of last resort. In the case of Wiseman vs. Dyess, Administrator of Emergency Relief Administration, 72 S. W. (2d) 517, the Supreme Court of Arkansas passed upon the application of the Relief Administration to enjoin the State Commissioner of Revenues from collecting automobile license tax and gasoline tax on automobiles and gasoline used and consumed in conducting the affairs of the administration. These automobiles and the gasoline therefore were purchased from funds made available to the State of Arkansas from the Federal Government. The lower court granted the injunction and on appeal the decree was affirmed. The Court in passing upon this stated, 1. c. 518:

"It is our opinion that these funds and the automobiles for which a portion of the funds had been expended were and are federal property, and as such are not subject to taxation by the state. It is true the act of Congress refers to the apportionment of these funds to the states 'as grants to the several States,' but it does not appear that such a donation thereof was made as to pass the title and control thereof from the federal government. They are, and continue to be, federal funds, subject to the supervision of the federal government in their disbursement. The state has no control over the expenditure of these funds. It does appear that for the convenience of the Federal Administrator, and to expedite the distribution of the federal government's bounty, application for the funds is made by the Governor of the state, who signs the receipt therefor and indorses the check used in remitting the funds, but when he has

done so he delivers the indorsed check to the plaintiff State Administrator for distribution. The clerical acts mentioned comprise the full extent of the authority and duty of the Governor.

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No reports of expenditures are made to the Governor; but such reports are made to the National Administrator, who appointed the State Administrator, and the National Administrator makes report to the President of the United States and to the Congress of the manner in which and the purposes for which the money was expended. The act of Congress under which the apportionments are granted require this, and negatives the idea that an absolute grant or gift had been made to the state. If, by any possibility, any of the funds thus apportioned were not required, the unexpended balance would revert, not to the state, but to the federal government.

The title to the automobiles is in the United States, and not in this state. It is stipulated that the purchase and use of these automobiles was and is in aid and in furtherance of the congressional program for the amelioration of the emergency which induced the passage of the legislation. As to what would be done with the automobiles when the use of them for the purpose for which they are now employed has ceased is a question not presented by the record before us. They are now used for a federal purpose, and, if so, they are not subject to taxation; nor is the gasoline required to run them subject to taxation."

Of course the foregoing case is not binding upon us. It is strongly persuasive of the proper prospective from which to view this Federal legislation. We have no reason to believe that the Supreme Court of our State would reach a different conclusion were the matter placed before it. As in the Arkansas case, the funds are handled separate and distinct from state funds. The relief funds received from the federal government are not treated as are funds which may be considered to be "state funds". They are not deposited in the State Treasury nor are they disbursed by reason of any legislative appropriation or paid by warrants drawn by the designated state officials. As stated in the Arkansas case, it is clear that

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the Federal Government at all times retains title and control of the funds and power and authority to supervise and direct and disburse.

Aside from the foregoing it seems peculiarly inappropriate that the State of Missouri should require and demand any exaction whatsoever upon the privilege of disbursing relief commodities in this State. It is unconscionable that any portion of the funds appropriated for the relief of suffering and hardship should be required to be paid before these commodities are permitted to reach those destitute and in need.

It is the opinion of this office that the Relief Commodities Division of the Emergency Relief Administration should be entitled to the same privileges and immunities respecting the Missouri Motor Vehicle Fuel tax as is accorded to any other agency or instrumentality of the United States Government.

Respectfully submitted,



HARRY C. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

ROY MCKITTRICK,
Attorney General

HGW:MM