

MOTOR VEHICLE FUEL TAX: Use tax under H. B. 516, Laws 1941,
GASOLINE TAX: p. 418, applies to interstate commerce.

February 16, 1942

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Honorable George Metzger
State Inspector of Oils
Jefferson City, Missouri

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Dear Sir:

This will acknowledge receipt of your letter of January 31, 1942, in which you request our opinion on the following:

Is the tax imposed upon motor vehicle fuels in House Bill 516, Laws of 1941, p. 448, collectible when said fuel is used upon our highways in vehicles engaged solely in interstate commerce?

Section 3, Laws of 1941, p. 450, provides:

"There is hereby levied and imposed an excise tax of two (2c) cents per gallon on all users of fuel upon the use of such fuel by any person within this state only when such fuels are used in an internal combustion engine for the generation of power to propel motor vehicles upon the public highways of this state, * * * * *."

There is no question but what the terms of this section are broad enough to and do include persons engaged solely in interstate commerce. The law applies to "any person" who uses such fuel "within this state" in an internal combustion engine "to propel motor vehicles upon the public highways of this state."

Section 5, Laws of 1941, p. 450, provides for the tax reports and computation of the tax. For the purposes of this opinion it is sufficient to say that Section 5 only contemplates accounting for and payment of a tax upon the fuel actually used in propelling vehicles upon our highways. Under the Act no tax is attempted to be imposed upon fuel which may be placed into the tank of the vehicle and carried outside this state in said tank and used on the highways of another state.

Interstate commerce, under the Constitution of the United States, has no exemption as such from state taxation. It is only when the law of the state operates to place a burden on interstate commerce in addition to that placed upon intrastate commerce that the commerce clause of the Federal Constitution is offended. In other words, there must be discrimination against interstate commerce. In *Gevin et al. v. Henneford*, 305 U. S. 431, 83 L. Ed. 272, 281, it is stated:

"A state's taxes are not discriminatory if the state treats those engaged in interstate and intra-state business with equality and justice."

And, in *McCarroll v. Dixie Greyhound Lines*, 309 U. S. 696, 60 Sup. Ct. 504, it is said, l. c. 506:

"The often announced rule is that while generally a state may not directly burden interstate commerce by taxation she may require all who use her roads to make reasonable compensation therefor."

Where the tax has this purpose the court further said, l. c. 506:

"It must appear on the face of the statute or be demonstrable that the tax as laid is measured by or has some fair relationship to the use of the highways for which the charge is made."

The tax imposed by Section 3, supra, applies equally to interstate and intrastate business, and thus they are treated with "equality and justice." It is a charge exacted by the use of the highways, and bears a reasonable relationship to use of the highways since it is only exacted upon the actual consumption of fuel used to propel vehicles upon the highways within this state.

The above, we think, clearly demonstrates that this tax applies to those engaged solely in interstate commerce and that the Federal Constitution permits the states to exact such a tax from interstate commerce. Thus there remains only the effect of Section 14, Laws of 1941, p. 452, to be considered. This section provides:

"No provision of this act shall apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be permitted under the Constitution and the laws of the United States."

That section obviously does not exempt interstate commerce as such, but only operates to exempt it if a tax thereon is not permitted by the Constitution of the United States or some Act of Congress. Such language frequently appears in state legislation, when dealing with interstate commerce and the design of such is to permit the state authorities to keep pace with the United States Supreme Court as it recedes from its previous views as to the immunity of interstate commerce from state taxation.

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CONCLUSION.

It is therefore our opinion that the tax imposed in House Bill 516, Laws of 1941, p. 448, upon the use of motor fuels to propel vehicles upon the highways of the state, may be collected from those who use such fuel while engaged solely in interstate commerce.

Respectfully submitted,

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APPROVED:

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LLB/rv