

MOTOR VEHICLE FUEL: Persons selling gasoline to cost plus a fixed fee contractor constructing National Defense Projects is exempt from using said gasoline to measure his tax.

GASOLINE TAX:

Person who is a cost plus a fixed fee contractor constructing National Defense Projects is exempt from tax imposed upon diesel, butane and propane.

March 17, 1942

Mr. George Metzger  
State Oil Inspector  
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of February 25, 1942, which is as follows:

"Recently the writer had a discussion with a Mr. Sidney B. McClanahan, relative to a National Defense Project being erected at the Emerson Electric Plant in St. Louis, County, Missouri. In connection with the work on this plant, they operate a station wagon, which is required at different times to travel to various parts of the City and County, picking up materials and supplies which are necessary for the progress of this project.

"It has been brought to my attention also that at the Weldon Springs project, numerous station wagons are put to use for the above mentioned purposes, and also to convey employees of the Fraser-Brace Construction Company and the Atlas Powder Company to and from various points, daily.

"I was given to understand that regardless of the fact that these station wagons were used for such purposes, the motor fuel used in them was to be considered 'tax Exempt', if purchased by the contractor.

"I would, therefore, appreciate receiving your opinion covering Section 8422 of House Bill No. 515 and Section 11 of House Bill No. 516."

As we understand the facts, the project under construction is the erection of a building and the installation of equipment at the Emerson Electric Plant in St. Louis County, Missouri, and that the motor vehicle fuel consumed is used in an automobile in connection with this work, both in picking up materials and supplies and delivering them to the job and in conveying to and from the job the workmen who are engaged in the work.

The question which seems to be presented is whether or not the motor vehicle fuels used in said automobiles are exempt from being used to compute the state tax.

Section 8411, Laws of 1941, page 447, subdivision c, contains a definition of "motor vehicle fuel." The definition there contained includes what is commonly called gasoline. The tax that is imposed upon the fuel, as defined in Section 8411, is, under the provisions of Article II, Chapter 45, R. S. Missouri, 1939, imposed upon the person who sells or receives the same in this state as a license tax in a sum equal to two cents (2¢) on each gallon sold or received during a month.

Section 8422, Laws of 1941, page 448, provides in part as follows:

"\* \* \* Nor is any tax imposed under the provisions of this act on any licensed distributor, dealer or person who shall sell motor vehicle fuel to another person for use in construction of National Defense Projects; provided said person purchasing the gasoline shall have in effect with the United States a cost-plus-a-fixed-fee or fixed percentage contract for the work being performed."

You have informed us that the persons purchasing this gasoline have in effect with the United States a cost-plus-a-fixed-fee or fixed percentage contract for the work being performed, and that being so, there is no question but that Section 8422 exempts the seller of this gasoline from having to use the same in measuring his license tax owed to the State.

In Section 8411, supra, the Legislature, in defining motor vehicle fuel, excluded from the definition such products commonly known as diesel fuel and liquefied gases commonly known as butane and propane. At the same session of the General Assembly there was enacted a law appearing in Laws of 1941, page 448, to tax those products excluded under the definition contained in Section 8411. In Section 1 of this Act the word "fuel" is defined, and the definition there given includes all types of motor vehicle fuel excluded from the definition contained in 8411. The tax levied by the Act appearing in Laws of 1941, page 448, respecting diesel, butane and propane, is imposed upon the person who uses such fuels to propel motor vehicles upon the highways of this state, rather than upon the seller. Section 11 of that Act, Laws of 1941, page 452, is as follows:

"No tax is imposed under the provisions of this act on any licensed user who shall use fuel in construction of National Defense Projects; provided said person using the fuel shall have in effect with the United States a cost-plus-a-fixed-fee or fixed percentage contract for the work being performed."

Under this exemption it appears that any person using this fuel, who has in effect with the United States a cost-plus-a-fixed-fee or fixed percentage contract for the performance of construction work, is excused from paying the tax there levied.

Mr. George Metzger

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March 17, 1942

CONCLUSION

It is, therefore, our opinion that a person using motor vehicle fuel, such as diesel, butane and propane, in a motor vehicle upon the highways of this state, which vehicle is engaged in picking up and delivering supplies and employees to a construction project which is being constructed by the person using said fuel under a cost-plus-a-fixed-fee or fixed percentage contract with the United States, is not subject to the motor vehicle fuel tax imposed under the Act appearing in Laws of 1941, page 448.

It is further our opinion that a person selling motor vehicle fuel, such as gasoline, to a person who is using said fuel to deliver materials, supplies and employees to construction projects which are being constructed by the purchaser of said gasoline under a cost-plus-a-fixed-fee or fixed percentage contract with the United States, is excused from using the fuel so sold in computing the license tax due the State of Missouri.

Of course, in both of the above instances, it is understood that the project under construction must be a National Defense Project before the exemption applies.

Respectfully submitted,

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Assistant Attorney-General

APPROVED:

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ROY McKITTRICK  
Attorney-General

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