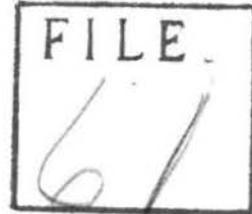


MOTOR VEHICLE FUELS: Money appropriated to pay refund claim on motor vehicle fuels may be used to pay refunds of taxes paid on diesel, propane and butane.

March 24, 1942

3-26

Mr. George Metzger
State Oil Inspector
Jefferson City, Missouri



Dear Sir:

This will acknowledge receipt of your letter of February 28, 1942, which is as follows:

"I would appreciate receiving your opinion relative to Section 9 of House Bill No. 516.

"We are particularly interested in knowing whether tax which has been erroneously paid can be refunded out of the appropriation made for refunds, covering motor vehicle fuel tax, for the present biennial period."

Section 9, Laws of 1941, page 451, provides in part as follows:

"In the event it shall appear to the Inspector that any taxes or penalties imposed by this act have been erroneously or illegally collected from any user, a refund shall be made * * * for the tax thus erroneously or illegally collected.
* * * * *
The Inspector shall cause any such refund, that he deems proper and correct, to be paid by a warrant drawn by said Inspector upon the state road fund, which shall be

audited and allowed by the State Auditor and shall be paid by the State Treasurer out of any funds appropriated for that purpose."

The refunds authorized by this section pertain to the tax imposed in Section 3, Laws of 1941, page 450, upon the use of "fuel," as defined in Section 1, Laws of 1941, page 449, to propel motor vehicle upon the public highways of this state.

In Laws of 1941, page 207, there appears Section 56 of H. B. 581, which is an appropriation to the Oil Inspection Department. This act appropriates \$2,116,000.00 out of the Highway Department Fund to pay the salaries, wages, and per diem of the officers and employees for general expenses of the Oil Inspection Department and for other purposes and for the refund of gasoline taxes for the years 1941-1942." This act then breaks the sum down into certain classes specifying the amount in each class and the purposes for which it may be spent. The last specification is:

"To pay the claims for refunds of taxes paid on motor vehicle fuels as provided by law \$2,000,000.00."

It will thus be noted that the appropriation act first states that the money appropriated is to be used, among other things, for payment of refunds of "gasoline taxes," and then specifies it is to be used for payment of claims for refunds of "taxes on motor vehicle fuels."

No act of this state relating to taxes defines the word "gasoline" which is used in this appropriation act, in first stating the purpose to which this money is to be put. Our information is that what is commonly called "gasoline" might fall within the definition of "fuel" in Section 1, Laws of 1941, page 449, or it might fall within the definition of "Motor Vehicle Fuels" in Section 8411 (d) Laws of 1941, page 448, depending on its grade, quality and

distillation range.

As heretofore pointed out, the tax imposed in H. B. 516, Laws of 1941, page 448, is upon the user of "Fuels" and reference to Article 2, Chapter 45, R. S. Missouri, 1939, as amended H. B. 515, Laws of 1941, p. 448, shows that the tax there imposed is upon the person selling or receiving "Motor Vehicle Fuels." Thus the reference to "gasoline taxes" as used in Section 56 of H. B. 581 (the appropriation act), can not be taken as intending to place any limitation upon the use of those funds for the payment of refunds of "gasoline taxes" when, as we have shown, there is no act imposing "gasoline taxes" in this state. Nor do we think it would make any difference if such phrase was determinative of the purpose to which the money appropriated could be applied. Our reason has heretofore been stated and is, that what is commonly called "gasoline" might, depending on its grade, quality and distillation range, fall within the legal definition of either "Fuel" or "Motor Vehicle Fuel."

Article 10, Section 19 of the Constitution requires every appropriation act to,

"* * * distinctly specify the sum appropriated, and the object to which it is to be applied; * * * * *"

Under this constitutional provision, Section 56 of H. B. 581, Laws of 1941, page 207, if it had only contained that portion beginning with the words "There is hereby appropriated" and ending with the words, "for the years 1941-1942," would have clearly been unconstitutional because no sum is "distinctly specified" to be applied to payment of refunds of "gasoline taxes". Thus being so, we think we may disregard the expression "gasoline taxes" and rely solely upon the last specification stating that said money may be used to pay refunds of taxes paid on "motor vehicle fuels."

There is no question but that the products defined in Section 1 of H. B. 516, Laws of 1941, p. 449, as "Fuel" are motor vehicle fuels when used to propel a motor vehicle upon the public highway and thus any tax paid thereon is included

Mr. George Metzger

(4)

March 24, 1942

within the terms of Section 56 of H. B. 581, Laws of 1941,
page 207.

CONCLUSION.

Therefore, it is our opinion that the money provided
in Section 56 of H. B. 581 (Laws 1941, p. 207) for payment
of claims for refunds of taxes paid on motor vehicle fuels
may be used to pay refunds of taxes under the terms of
Section 9 of H. B. 516, Laws of 1941, page 451.

Respectfully submitted,

LAWRENCE L. BRADLEY
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

LLB/rv