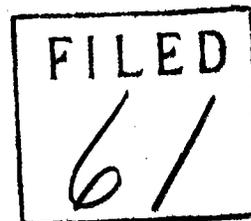


MOTOR VEHICLE FUEL TAXES:

Naphtha when distilled and especially designed for use other than as a fuel for internal combustion engines, is not a motor vehicle fuel, and is, therefore, not subject to tax.

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The Honorable George Metzger
State Inspector of Oils
Jefferson City, Missouri

Dear Mr. Metzger:

Your letter of April 30, requesting an opinion from this Department whether under the terms of the existing motor fuel tax laws of Missouri, naphtha not used for internal combustion engines is subject to motor fuel tax, has been received. Likewise, your letter of April 12, with which you enclosed copies of correspondence between your Department and the Tankar Gas, Inc., Minneapolis, Minnesota, for my inspection was also received in due time.

Your request for an opinion on this subject has been referred to the writer for reply. Your particular request for the opinion is as follows:

"On April 12, I wrote to you, attaching copy of my letter of February 20, 1945, to the Tankar Gas, Inc., together with copy of letter dated March 13 from Bill, Maslon, Grossman & Brill, counsel for Tankar Gas, regarding the question of motor fuel tax on sales of naphtha.

"Will you please let me have your written opinion as to whether or not the sales of naphtha in this case are subject to tax under our existing Motor Fuel Tax Law."

Sub-section (b) of Section 2 of the Motor Vehicle Fuel Tax Act, Laws of Missouri, 1943, page 670, is as follows:

"'Motor Fuels' shall mean: (1) all products commonly or commercially known or sold as

gasoline (including casinghead and absorption or natural gasoline) regardless of their classifications or uses; and (2) any liquid which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); provided that the term 'motor fuels' shall not include (a) naphthas and solvents, as defined in paragraph j of this section; (b) liquefied gases which would not exist as liquids at a temperature of sixty degrees (60°) Fahrenheit and a pressure of 14.7 pounds per square inch absolute; (c) denatured wood or ethyl alcohol, ether, turpentine or acetates and products having a Reid Vapor Pressure of 30 pounds or more at one hundred degrees (100°) Fahrenheit, are used as an additive in the manufacture, compounding, or blending of a liquid within (1) or (2) above, in which event the quantity so used shall be deemed to be motor fuel."

Eliminating such terms of said Section (b) relating to other liquids except naphtha, we find that in so far as naphtha is concerned the Section would read that motor fuels means all products known as gasoline; and any liquid which when subjected to distillation in accordance with standard methods of test for distillation of naphtha and similar petroleum products shows not less than 10 per centum distilled below three hundred forty-seven degrees Fahrenheit (175° Centigrade), and not less than 95 per centum distilled below four hundred sixty-four degrees Fahrenheit (240° Centigrade); provided that the term "motor fuels" shall not include (a) naphtha and solvents as defined in paragraph j of this Section.

Paragraph j of the Act on page 674, Laws of Missouri, 1943, is as follows:

"(j) 'Naphthas and Solvents' shall mean and include those liquids which come within the specifications set out under (2) of paragraph b of this section but which are especially designed for use other than as a fuel for internal combustion engines."

Paragraph j, supra, shall mean and include, so it states, "naphthas and solvents" as liquids which are especially designed for use other than as a fuel for internal combustion engines.

It would seem, therefore, if naphthas do not fall below the distillation percentage specified in (2) of sub-section (b) of Section 2 of said Act, and are especially designed for use other than as a fuel for internal combustion engines, they do not come within the definition of motor fuels and are therefore not taxable.

The Courts of this State, and of the country generally, and text writers of the law, hold that statutes creating exemptions of persons or property from payment of taxes must be construed against such exemptions.

59 C. J. 1135, states the rule as follows:

"Exemptions. In pursuance of the beneficent public policy which favors equality in the distribution of the burdens of government, all exemptions of persons or property from taxation are to be construed strictly against the exemption;
* * * "

61 C. J. 392, under the subject of taxation further states the same rule as follows:

"Unlike the rule of liberal construction which has been generally adopted with reference to exemptions from levy and sale for the payment of debts, an

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alleged constitutional or statutory
grant of exemption from taxation
will be strictly construed. * * * "

In the case of B.P.O.E. vs. Koeln, 262 Mo. 444, l.c. 445, in following the same rule of strict construction of exemptions, held as follows:

"* * * 'It must be conceded to the state that whether a tax-exempting clause be viewed from the standpoint of the State down to the people, or from the standpoint of the people up to the State there must be unbending and inviolate rules which as sure words of the law are always to be reckoned with; and those rules (from the standpoint of the State) are that an abandonment of the sovereign right to exercise the vital power of taxation can never be presumed. The intention to abandon must appear in the most clear and unequivocal terms * * * ' "

In the case of State ex rel. Y.M.C.A. vs. Gehner, 11 S. W. (2d) 30, l.c. 34, our Supreme Court followed the rule by saying:

"In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed. As a rule all property is liable to taxation, exemption, the exception, and it devolves upon the person claiming that any specific property is exempt to show it beyond a reasonable doubt. It is in no case to be assumed that the law intends to release any particular property from this obligation; and no such exemption can be allowed, except upon clear and unequivocal proof that such release is required by the terms of the statute. If any

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doubt arises as to the exemption claimed, it must operate most strongly against the party claiming the exemption.' * * * "

The conditional qualifications set up in sub-section (b) of Section 2 of said Act, and in sub-section j of said Act, are questions of fact. Under the above cited authorities, it is, we believe, in harmony with those holdings, proper to say that the Tankar Gas, Inc. may not arbitrarily determine the question whether naphtha at all events is exempt from taxation as a motor vehicle fuel. We think it must establish that the naphtha fluid which it is offering for market and marketing in this State, strictly complies with the requirements of said Section 2 of said Act of 1943, and that the Oil Inspection Department of this State is entitled to have proof furnished by said company of such fact, and that naphtha as so offered for sale and sold by said company in this State is designed especially for use other than as a fuel for internal combustion engines. We think your Department would have the right to demand and receive affidavits from purchasers and users of such naphtha as would establish the facts necessary to exempt naphtha from the terms of said Act, the same to be procured by said company for your Department.

CONCLUSION

It is, therefore, the opinion of this Department that if such facts are established that naphtha as offered for sale and sold in this State by this company or others, comes within the specifications of said sub-section (b) of Section 2 of said Act of 1943, as to distillation, and being designed for use other than as a fuel for internal combustion engines, it is exempt under the terms of said Act of 1943, from motor vehicle fuel tax, because it is under such facts and conditions defined as not being motor vehicle fuel.

Respectfully submitted,

GEORGE W. CROWLEY
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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