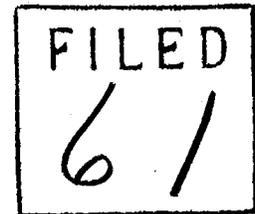


MOTOR FUEL USE LAW:

Gasoline as a motor fuel is not subject to a use tax under the Act of 1941, pages 448, 449, as amended in 1943, Laws of 1943, pages 657, 658.

September 25, 1945



Honorable George Metzger
State Inspector of Oils
Jefferson City, Missouri

Dear Mr. Metzger:

Your letter of July 27, 1945, requesting an opinion from this Department, has been received.

Your letter states:

"It has been my privilege to review a statement issued by the Southwestern Greyhound Lines, Inc., of Fort Worth, Texas, covering their operations in the State of Missouri during the month of May, 1945.

"This statement reveals the fact that their buses and coaches traveled a total of 486,294 miles over the highways of this state, and in doing so consumed or used 87,018 gallons of gasoline.

"Inasmuch as this concern does not receive or store gasoline in this state, we cannot impose a tax under our Motor Fuel Tax Law, which became effective December 1, 1943.

"However, I should like to have your opinion as to whether or not the Southwestern Greyhound Lines would be subject to payment of tax on the use of gasoline in such operations under the Motor Fuel Use Law, which became effective October 10, 1941, amended August 2, 1943."

The question you submit is whether the Southwestern Greyhound Lines, Inc., are subject to the payment of tax on

the use of gasoline in operating its busses and coaches over the highways of Missouri, under the Motor Fuel Use Law which you say became effective October 10, 1941, and which you state was amended August 2, 1943.

This evidently refers to the Act appearing in Laws of 1943, pages 657 and 658, which repealed Section 1, Laws of 1941, page 448. That Act refers only to naptha, diesel fuel, and other gases when they are used as a fuel to propel motor vehicles on the highways of this State. It does not include gasoline.

There were two Acts passed by the Legislature of 1941, pertaining to motor fuels. Since receiving your inquiry this office has consulted with the author of both of those Acts of 1941, who was also the author of the Acts of the Session of 1943, repealing the said Acts of 1941, and re-enacting new sections in place thereof. The author of these Bills and repealing Acts and of the new provisions clarifies the situation by stating that the Act of 1941, pages 447, 448, was intended to define and refer only to gasoline.

The other Act of 1941, Laws of 1941, pages 448, 449, "Fuel" as defined on page 441, defined and referred to naptha and other fuels not generally used in propelling automobiles on the highways of this State.

The Act of 1941, pages 448-452, was repealed, Laws of 1943, pages 657, 658, and new sections were enacted in place thereof. These new sections, it is stated by the author thereof, only apply to naptha, diesel fuel, propane and butane gas where they may be used to propel automobiles on the highways, and does not refer to gasoline.

The Act of 1943, Laws of 1943, pages 670-699, was intended to, and does, refer only to gasoline as a motor fuel as being subject to sales tax under that Act. This was the Act which your letter evidently refers to as becoming effective December 1, 1943.

The Act of 1943, Laws of 1943, pages 670-699, resulting in the repeal of Article 2, Chapter 45, R.S. Mo. 1939, including the said Act of 1941, page 447, and the re-enacting of new sections relating to motor fuel tax, preserved the distinction and difference for tax purposes between gasoline as a motor fuel which has previously been made the subject of a use tax in the Act of 1941, page 447,

and naphtha and like liquids referred to in the Act of 1941, pages 448, 449, dealing solely with naphtha and such other liquids, and which was repealed Laws of 1943, page 657.

The author of these laws states that the distinction and difference was preserved between them according to standards of distillation and by subjecting naphtha and such fluids to a use tax, and subjecting gasoline as a motor fuel to a sales tax, and was carried out to avoid the necessity of requiring a great number of refunds when the purchaser of gasoline is permitted to pay a sales tax at the time of purchase thereof, and if, perhaps, some of the gasoline so purchased is not used as motor fuel on the public highways, it would not be burdensome for such purchaser to get a refund on such gasoline not so used on the highways, because it is said 75% or more of gasoline purchased is used in automobiles on the public highways as a motor fuel.

The separation of gasoline as a motor fuel, and subjecting it to a sales tax as distinguished from a use tax, as was previously provided in the Laws of 1941, pages 447, 448, and as distinguishing gasoline from naphtha for tax purposes thereby exempting naphtha from sales tax is made clear in the Act of 1943, Laws of 1943, pages 667-699. The effect of the said 1943 Act was, and is, to clearly preserve the distinction in sub-section (b) of Section 2, Laws of 1943, pages 671, 672, between gasoline as a motor fuel, and naphtha by making gasoline subject to a sales tax, whereas, the provisions of said sub-section (b) on pages 671, 672, exempts naphthas and such solvents as are defined in sub-paragraph (j) of said Section 2, on page 674, as being especially designed for use other than for internal combustion engines, from paying a sales tax.

That the distinction between the two fluids was intentionally preserved in the new enactments of Laws of 1943, supra, subjecting naphtha and such products to a use tax is made more definite in the definition given of "Fuel" other than gasoline in Section 1, paragraph 2, of the Act of 1943, page 658, relating to naphtha and such liquids which is as follows:

"'Fuel' shall mean all combustible gases and liquids suitable for the generation of power in an internal combustion engine except such as are subject to the tax imposed by the motor fuel tax law of this state."

September 25, 1945

The above quoted paragraph evidently refers to the sales tax required to be paid on gasoline under the Laws of 1943, pages 670-699.

The effect of these statutes is that the Act of 1943, pages 657, 658, preserves the difference and distinction between naphtha and such solvents, and gasoline and subjects naphtha and like liquids to a use tax as distinguished from gasoline which is subject to a sales tax. Said Act of 1943, pages 657, 658, in Laws of 1943, pages 670-699, does not include gasoline as being subject to a use tax.

CONCLUSION.

It is, therefore, the opinion of this Department that the Southwestern Greyhound Lines, Inc., would not be subject to payment of a tax on the use of gasoline in such operations as you describe under the Motor Fuel Use Law which you state became effective October 10, 1941, and which you state was amended August 2, 1943. This in fact is the Act of 1943, pages 657, 658, repealing Section 1, of the Laws of 1941, pages 448, 449, and which refers both in the said Laws of 1941, and the Laws of 1943, pages 657, 658, only to naphtha, and such liquids as being subject to a use tax, and does not include gasoline.

Respectfully submitted,

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APPROVED:

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