

APPROPRIATIONS: Availability of current appropriation to pay claims for refunds of motor vehicle fuel tax accruing during previous fiscal year.

July 24, 1947

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42

Mr. B. H. Howard, Comptroller
Department of Revenue
State Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date for an official opinion of this department, reading as follows:

"Section 3.060 of House Bill 172, 64th. General Assembly, reads as follows:

There is hereby appropriated out of the State Treasury, chargeable to the State Highway Department Fund, One Million Fifty Thousand Dollars (\$1,050,000.00) for the purpose of refunding of gasoline taxes, as provided by law, for the period beginning July 1, 1947, and ending June 30, 1948.

"The appropriation of the 63rd. General Assembly provided the following:

To pay claims for refund of taxes paid on motor vehicle fuels as provided by law for the period beginning July 1, 1946 and ending June 30, 1947
.....\$1,000,000.00.

"As of June 2, 1947, the appropriation by the 63rd. General Assembly was exhausted and since that time we have received deficiency claims amounting to \$221,550.02 and it appears that we will receive further claims dated prior to July 1, 1947, which may increase the total to \$250,000.00 or more.

"Before approving these claims for payment, we would appreciate an opinion from you as to whether or not a claim for refund

received during the fiscal year ended June 30, 1947, can be paid from the appropriation for the period beginning July 1, 1947 and ending June 30, 1948.

"A reply at your earliest convenience will be appreciated."

The refunds referred to in the two appropriation acts arise under the provisions of Sections 8411.15, 8411.16 and 8411.17, Mo. R. S. Ann. In substance, these statutes provide for presentation of claims based upon loss or destruction of motor vehicle fuel, non-use of motor vehicle fuel in motor vehicles used upon the public highways and errors made in the determination of the tax due to the administrator of the Motor Vehicle Fuel Tax Act. Upon determination by that official that such refunds are proper, the administrator is required to requisition the amount of refund due the claimant from the state treasury. It is such approved claims as these that have now been forwarded to the office of the comptroller for payment.

The determination of the question which you have proposed hinges upon the availability of the current appropriation for the payment of such of these claims as have been established and approved during the prior fiscal year.

A very similar situation arose and was decided in the case of State ex rel. vs. Thompson, 45 S. W. (2d) 1078. The facts involved in that case were briefly these: The relatrix had in 1923 been found eligible to receive a Missouri pension for the deserving blind. Her application had been duly approved and certified to the State Auditor at that time. She remained on the roll until April 1, 1926, at which time the commission administering the blind pension act unwarrantedly removed her name therefrom. She was restored to the roll on September 12, 1928, and thereafter received her pension. As a result of subsequent proceedings, she was restored on the roll on May 8, 1931, retroactive to April 1, 1926, the date of her removal therefrom. The respondent in the case, the State Auditor, refused payment for the period from April 1, 1926, to September 12, 1928, on the ground that the then current appropriation for the biennial period beginning the first day of January, 1931, and ending on the 31st day of December, 1932, was not available for that purpose.

The court, in disposing of this contention, said at l.c. 1078:

"The only question here is whether the payment which relatrix seeks to have made out of the state treasury is within the 'object' to which the appropriation under the act just set out is to be applied. If it is a 'pension to the deserving blind as provided for in chapter 51, Revised Statutes, 1929,' it is. The language in the title of the Appropriation Act, 'for the biennial period beginning on the first day of January, 1931, and ending on the thirty-first day of December, 1932,' if read into the act itself, merely limits the period within which the appropriation made shall be available, in conformity with said section 19 of the Constitution; it has no reference to the time when the right to the pensions for the payment of which the appropriation is made should accrue or had accrued, nor to the period for which such pensions are payable.

"Section 8893 (Revision of 1929) provides that an adult blind person having the qualifications therein prescribed 'shall be entitled to receive, when enrolled under the provision of this article, an annual pension,' etc. One is 'enrolled under the provision of this article' when his name is placed on the blind pension roll by the state auditor. Section 8900. When enrolled the pensioner is entitled to a pension from the date of the filing of his application with the probate court. An applicant's name is placed on the blind pension roll upon certification by the commission for the blind; it is stricken from the roll upon a like certification when the commission, after notice and hearing, determines that the pensioner is no longer qualified to receive a pension. Section 8896."

It is our thought that in view of the similarity existing between the administrative procedure involved in certifying persons as eligible for blind pension benefits and for determining that refunds of motor vehicle fuel tax are properly due from the state that similar decision would be reached.

CONCLUSION

In the premises, we are of the opinion that the appropriation made by the 64th General Assembly for the purpose of refunding motor vehicle fuel taxes, found at Section 3.060 of House Bill No. 172, is available for the payment of claims for such refunds as have been found by the administrator of the Motor Vehicle Fuel Tax Act to be proper, even though such accrued claims were so found to be proper during the prior fiscal year.

Respectfully submitted,

WILL F. BERRY, Jr.
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APPROVED:

J. E. TAYLOR
Attorney General

WFB:VLM