

REFUNDS FROM STATE TREASURY: Section 9.061 of House Bill No. 445  
of the 64th General Assembly held void.

*See attached  
S.S. Kresge Co. v. Howard  
S. Ct.*

FILED  
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December 11, 1947

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

Dear Sir:

Reference is made to your request for an official opinion of this office with respect to the validity of the appropriation found in Section 9.061 of House Bill No. 445 of the 64th General Assembly.

The appropriation in question reads as follows:

"Section 9.061. There is hereby appropriated out of the State Treasury, chargeable to the General Revenue Fund, the sum of One Thousand Seven Hundred Ten Dollars (\$1,710.00) for the period beginning January 8, 1947, and ending June 30, 1947, for the relief of the S. S. Kresge Company because of the over-payment of foreign corporation qualification taxes."

It is our thought that the above appropriation is violative of Section 23 of Article III, subsection 7 of Section 40 of Article III, and Section 22 of Article IV of the Constitution of Missouri.

Further, assuming that the payment was voluntarily made by the corporation referred to in the appropriation act, we think the case falls within the rule declared by the Supreme Court in Couch v. Kansas City, 127 Mo. 436, holding that voluntary payment of taxes may not be recovered where such payment is made as a result of a mistake of law.

For the reasons mentioned, it is our opinion that Section 9.061 of House Bill No. 445 of the 64th General Assembly is void.

Very truly yours,

WILL F. BERRY, Jr.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

WFB:HR