

Taxation!

MOTOR VEHICLE FUEL TAX:

Claimant of motor vehicle fuel tax refund must declare to the seller at time of purchase his intention to use motor fuel for purposes other than propelling of motor vehicles upon the public highways of this state and declare his intention to claim a refund of the tax paid as a part of the purchase price of the fuel.

All applications for refunds under section 142.230 ^{as amended} must be filed with the collector of revenue within 120 days of the date of purchase, as shown on the original invoice or sales slip.

March 6, 1951

Mr. Andrew J. Higgins,
Prosecuting Attorney
Platte County,
Platte City, Missouri.



3-22-51

Dear Sir:

In reply to your recent request for an opinion from this office which request was stated as follows:

"Re: MOTOR FUEL USE TAX: Counties are not liable for payment of the Motor Fuel Use Tax for fuel consumed by motor vehicles used in repairing and maintaining county roads. Letter October 24, 1949 to: Mr. Duncan R. Jennings, Prosecuting Attorney, Montgomery County, Montgomery City, Missouri.

"I have before me the above opinion and it raises two questions to the local county court:

"1. In view of this ruling how is the county court obliged to prove to their distributors of fuel for such vehicles that they are not chargeable with the 2 cent per gallon tax?

"2. In the event that they are to pay the tax and then claim the refund, do they proceed in the manner prescribed for farmers and others coming within the refund section of the statute; and, can they go beyond the 120 day limitation period and collect a refund of tax paid prior to 120 days of a given date?

"I noticed that the above opinion was written by you and am writing to you under the theory that the answer to the above questions follow from the opinion. If the situation is otherwise I will be glad to request an opinion through the regular channels."

The opinion to which you refer in your letter deals with the Motor Fuel Use Tax found as sections 142.360 to 142.490 RSMo. 1949. The Motor Fuel Use Tax levied on motor fuels includes such fuels as butane and diesel oil used for propelling motor vehicles. Revised Statutes of Missouri 1949, sections 142.010 to 142.350 levy a tax on motor vehicle fuels; included therein as a type of fuel on which the tax is levied is gasoline. For an understanding of these taxing statutes you should keep in mind there are two different taxing provisions with a different method of collection provided for each tax and a different method of refund provided.

The opinion to which you refer in your letter discusses the Motor Vehicle Use Tax. However, the questions you present in your letter appear to involve a refund of tax paid on gasoline which is taxed under the Motor Vehicle Fuel Tax. Hence, I am presuming that your questions deal only with a refund of tax paid on motor fuel under the Motor Vehicle Fuel Tax (sections 142.010 to 142.350).

This office has recently published an opinion dealing with a refund of the tax on motor vehicle fuel to a county and concludes:

"A county is not entitled to a refund of the tax imposed by the Motor Vehicle Fuel tax on gasoline used in trucks and equipment used in maintaining, repairing or constructing public roads by virtue of being a political subdivision of the state. However, a person, including a county, who uses motor fuel on which the motor vehicle fuel tax has been paid is entitled to be reimbursed and repaid such tax upon establishing that such fuel was not used to operate or propel a motor vehicle, as defined by the taxing statute, over a public road. If the motor fuel is being used to operate a motor vehicle designed to be used for carrying persons or property over a public road then such fuel is subject to the tax imposed by the motor vehicle fuel tax, sections 142.010 to 142.350 RSMo. 1949. If the motor fuel is not being used in equipment defined as a motor vehicle and is not being operated or propelled over a public road then upon establishing such fact the county is entitled to a refund of the tax paid by it."

A copy of that opinion is enclosed.

Your first question then is: How is the county court obliged to prove to their distributors of fuel for such vehicles that they are not chargeable with the two cent per gallon tax?

The purchaser of motor fuel, such as gasoline, is not required to prove to the distributor of motor fuel that such purchaser may be entitled to a refund of the motor fuel tax. It is only necessary that the purchaser at the time of purchase declare to the seller of said motor fuel his intention to use the motor fuel for purposes

other than the propelling of motor vehicles upon the public highways of this state, and declare his intention to claim a refund of the tax paid as a part of the purchase price of the fuel. This declaration of intention is all that is required and no proof of such intention need be submitted to the distributor from whom the motor fuel is purchased. I believe section 142.230, par. 5, RSMo. 1949, is unambiguous and clear and reads as follows:

"No claim for refund of motor fuel tax under this section shall be allowed unless the supporting original invoice or sales slip indicates on its face that the purchaser at the time of purchase declared to the seller of said motor fuel his intention to use the motor fuel thus purchased for purposes other than the propelling of motor vehicles upon the public highways of this state, and declared his intention to claim a refund of the tax paid as a part of the purchase price of the fuel. As evidence of this declaration of intention, the seller of the fuel, at the time of the sale, shall indicate, by stamp or otherwise, on the face of the original invoice or sales slip, a certification that such declaration of intention was made. The certification shall be in substantially the following form:

"The undersigned, as agent for _____, the seller, hereby certifies that the purchaser of the motor fuel invoiced hereon at the time of purchase expressly declared it as his intention to use such motor fuel for a purpose other than propelling motor vehicles upon the public highways of this state, and declared his intention to file a claim for refund of the tax included in the purchase price.

Agent for Seller."

Your second question appears as follows: In the event the county court pays the tax imposed on motor vehicle fuels, how do they proceed to make application for a refund of the tax paid, may they go beyond the 120 day limitation period and collect a refund of tax paid prior to 120 days of the date of purchase.

In reply to this question your attention is directed to section 142.230, RSMo. 1949, which reads as follows:

"1. All motor fuels distributed or sold in this state by any person shall be presumed to have been sold for use in propelling motor vehicles upon the public highways of this state.

"2. Any person who shall buy and use motor fuel for any purpose whatever, except in the operation of motor vehicles upon the highways of this state, who shall have paid or have had charged to his account the license tax required by this chapter to be paid, either directly or indirectly through the amount of such tax being included in the price of the fuel, shall be reimbursed and repaid the amount of the tax, upon presenting a claim therefor to the collector of revenue.

"3. The claim to the collector of revenue shall be in the form of an affidavit, stating the purpose for which the fuel was used, and shall be supported by the original sales slip or invoice covering the purchase of the fuel. The term 'original sales slip or invoice,' as used herein, shall mean the top copy and not any duplicate original or carbon copy of the invoice or sales slip. The original sales slip or invoice, must bear the following legend: 'This is customer's invoice,' or some similar legend, and shall in addition contain the following information:

- "(1) Date of sale;
- "(2) Name and address of purchaser, which must be the name of the claimant;
- "(3) Name and address of seller;
- "(4) Number of gallons purchased and price per gallon;
- "(5) Missouri motor fuel tax, as a separate item.

"4. The forms upon which claims are to be made shall be prescribed by the collector of revenue, and he shall keep the clerks of the county courts and the comptroller of the city of St. Louis supplied with quantities of said forms.

"5. No claim for refund of motor fuel tax under this section shall be allowed unless the supporting original invoice or sales slip indicates on its face that the purchaser at the time of purchase declared to the seller of said motor fuel his intention to use the motor fuel thus purchased for purposes other than the propelling of motor vehicles upon the pub-

lic highways of this state, and declared his intention to claim a refund of the tax paid as a part of the purchase price of the fuel. As evidence of this declaration of intention, the seller of the fuel, at the time of the sale, shall indicate, by stamp or otherwise, on the face of the original invoice or sales slip, a certification that such declaration of intention was made. The certification shall be in substantially the following form:

"The undersigned, as agent for _____, the seller, hereby certifies that the purchaser of the motor fuel invoiced hereon at the time of purchase expressly declared it as his intention to use such motor fuel for a purpose other than propelling motor vehicles upon the public highways of this state, and declared his intention to file a claim for refund of the tax included in the purchase price.

Agent for Seller."

"6. All applications for refunds under this section must be filed with the collector of revenue within one hundred and twenty days of the date of purchase, as shown on the original invoice or sales slip. Upon the receipt of such affidavit and invoice or sales slip, the collector of revenue, upon approving the same, shall cause the amount of the tax that such claimant paid to be refunded by a requisition upon the state comptroller, supported by the claim, for a warrant upon the state treasurer, payable to said claimant. The warrant shall be paid by the treasurer out of any funds appropriated by the legislature for such purpose."

This section prescribes the procedure for making an application of refund of the motor fuel tax and must be followed before the refund can be made. The same procedure is followed by any applicant for the refund under this section.

The application for refund under this section must be filed with the collector of revenue within 120 days of the date of purchase, as shown on the original invoice or sales slip. The statute makes it mandatory that the application for refund must be filed within this time limit by the claimant for refund.

Section 142.250, RSMo. 1949, provides in part as follows:

"* * * or any refund required to be made under the provisions of this law which shall be denied or withheld wrongfully, may be recovered by the person paying the same in a suit at law against the state of Missouri * * *.

"(3) Such suit shall be commenced within five years from the date of the payment of the sum or within five years from the date of final rejection of the claim by the collector of revenue."

While this section establishes a five year period in which suit may be commenced to recover a refund refused to be made it does not affect the clear and unambiguous mandate that all applications for refund under section 142.230 must be filed with the collector of revenue within 120 days of the date of purchase, as shown on the original sales sheet or invoice.

CONCLUSION.

1. An applicant for refund of motor vehicle fuel tax imposed by sections 142.010 to 142.350 is required to declare his intention to the seller at the time of purchase to use the motor fuel for purposes other than the propelling of motor vehicles upon the public highways of this state; and declare his intention to claim a refund of the tax paid as a part of the purchase price of the fuel. The purchaser is not required to submit further proof of the use to be made of the motor fuel other than this declaration of intention.

2. A refund of the motor vehicle fuel tax is made pursuant to the procedure prescribed by section 142.230 RSMo. 1949. It is made mandatory by the statute that all applications for refund under section 142.230 must be filed with the collector of revenue within 120 days of the date of purchase, as shown on the original invoice or sales slip.

Respectfully submitted,

JOHN E. MILLS
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney-General.

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