

APPROPRIATION: Appropriation under Section 3.120, Laws of Missouri, 1951, page 47, is available only for refund of "taxes."  
REFUNDS:



April 21, 1953

Honorable J. Rex James  
Administrative Officer  
Division of Health  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office, reading as follows:

"I would like to request an opinion as to your interpretation of Section 3.120 of the appropriation laws of 1951 through 1953. This is a Section appropriating funds to the Director of Revenue for paying refunds for various state departments.

"The Division of Health is faced with the necessity of refunding some \$30,000 to \$35,000 per biennium for overpayments or erroneous payments of various fees collected by the Division. These fees are collected for such things as transcripts of birth certificates, inspection and licensing of tourist courts and hotels, beverage fees, water analysis fees, etc. At present we are making these refunds by holding the original payment until it becomes apparent that the service cannot be rendered and then refunding the original payment; or by refunding out of current revenue. The State Auditor informs us that both processes are incorrect. The Director of Revenue has stated that he will make these refunds for us, if in your opinion Section 3.120 is broad enough to cover the refund of fees collected.

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"I would appreciate an early opinion in this regard, in that if this Section is not adequate it will be necessary for new legislation to be enacted this session."

Section 3.120, found Laws of Missouri 1951, page 47, referred to in your letter of inquiry, reads as follows:

"There is hereby appropriated out of the State Treasury, the sum of Seventy-five Thousand Dollars (\$75,000.00), of which sum Fifty Thousand Dollars (\$50,000.00) is chargeable to the General Revenue Fund, and Twenty-five Thousand Dollars (\$25,000.00) is chargeable to that portion of the State Revenue set apart for the support of the free public schools, or so much thereof as may be necessary, for the use of the Director of Revenue, for the purpose of paying refunds for any over-payment or erroneous payment of sales tax or any other tax which the state is authorized to collect, and which is credited as State Revenue, as provided by law, for the period beginning July 1, 1951 and ending June 30, 1953."

(Emphasis ours.)

We have emphasized the word "tax" appearing in the appropriation measure for the reason that such word has acquired a fixed technical meaning in law which is peculiar and appropriate to the phraseology employed in the statute. Therefore, we direct your attention to Section 1.090, RSMo 1949, reading as follows:

"Words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import."

The meaning ascribed to the word "tax" has been set forth in 61 C.J., page 68, from which we quote:

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"Essentials of Tax. As indicated in its definitions, the essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority, in the exercise of the taxing power, the contribution being of a proportionate character and payable in money, and imposed, levied, and collected for the purpose of raising revenue, to be used for public or governmental purposes, and not as payment for some special privilege granted or service rendered. Taxes levied for governmental purposes are not imposed on the basis of a special and particular benefit accruing to each citizen in proportion to the taxes paid, and the amount is only limited by governmental needs. Taxes and taxation are therefore distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes or under particular powers or functions of the government, such as forfeitures, fines, and penalties, and fees of public officers. So there is a distinction between license fees or occupation taxes and ordinary taxes, between taxes and assessments for public improvements, and between the power of taxation and the right of eminent domain. In view of the essential characteristics stated above, the question whether a particular contribution, charge, or burden is to be regarded as a tax depends upon its real nature, and if it is in its nature a tax, it is not material that it may be called by a different name; and conversely if it is not in its nature a tax, it is not material that it may have been so called."

Also, the following appearing on page 73:

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"Fees of Public Officers Not Taxes. Fees prescribed to be paid by individuals to public officers, whether in the judicial or executive department of government, for services rendered, are not ordinarily taxes, unless the object of the requirement is to provide general revenue rather than compensation for those officers, as in the case of graduated fees in probate proceedings based upon the valuation of the estate and having no relation to the services rendered or compensation received therefor by the officer. On similar principles, where statutes provide for the inspection of given commodities, with a view to determine their quality and fitness for use, the fees to be paid to the inspectors are not properly classed as taxes."

With this definition of the word "tax" in mind, we have examined the various statutes under which money is collected by the Division of Health. It is noted that in all instances such money arises from the payment of license fees, inspection fees, copies of public records, et cetera. It is apparent that they do not fall within the meaning of the word "tax" as that word is used in legal phraseology. Inasmuch as the General Assembly in writing the appropriation act, quoted supra, has seen fit to refund only "taxes" which have been over-paid or paid through error, we are constrained in construing such act to limit its application only to money paid into the State Treasury arising from imposts having the characteristics of the legal definition of the word "tax."

#### CONCLUSION

In the premises, we are of the opinion that the appropriation made under Section 3.120, found Laws of Missouri, 1951, page 47, is not available for the repayment of moneys erroneously collected or over-paid as license fees, inspection fees, or fees for the obtention of copies of public records and that refunds thereunder may be made only with respect to "taxes" which have been over-paid or erroneously paid.

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The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON  
Attorney General

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