

OPINION REQUEST NO. 127-63

answered by letter (Bushmann)

March 13, 1963

Honorable George H. Pace
Representative, Marion County,
House Post Office
Jefferson City, Missouri



Dear Representative Pace:

This is in answer to your letter dated March 6, 1963 wherein you request an official opinion from this office. In your letter you ask the question as to whether the Department of Revenue has any authority to reject motor fuel tax refund claims submitted by non-highway users.

As a general statement of law there is a public policy against refunds for taxes. IBM vs. State Tax Commission, Mo. Sup., 362 SW 2d 635. In the IBM opinion the Supreme Court of Missouri stated what they believe to be a "rather firmly fixed rule" by citing 51 Am. Jur., Taxation, Sec. 1167, p. 1005, "On grounds of public policy, the law discourages suits for the purpose of recovering back taxes alleged to be illegally levied and collected."

Since refunds are not favored, it is the opinion of this office that any taxpayer seeking a refund of motor fuel tax carries the burden of proving that he is entitled to such a claim. This position is substantiated by the language found in Section 142.230, RSMo 1959, where it states that "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."

This same statute goes on to provide the exact manner and procedure to be followed by those non-highway users seeking refunds. The refund claim must be in the form of an affidavit, stating the purpose for which the fuel was used. The affidavit must be supported by the original sales slip or invoice covering the purchase of the fuel. The forms upon which the claims are to be made are prescribed by the Collector of Revenue.

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Sub-section 5 of this statute states that no claim for refund of motor fuel is to 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 * * * that the fuel was not intended to be used for propelling motor vehicles on public highways. The sales slip must also indicate that at the time of purchase the seller was notified of the purchaser's intention to later claim a refund for the tax paid.

This office places particular emphasis upon Sub-section 6 of this statute wherein it provides that upon receipt of the 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 * * *".

Since Section 142.230, supra, spells out in considerable detail the steps to be followed by the claimant and since there is direct statutory authority authorizing the Collector of Revenue to prescribe the affidavit forms and to approve them as well as the invoice and sales slips, it is our opinion that the Collector of Revenue thus has the discretionary authority of rejecting refund claims when they patently show an error. In exercising his discretion the Collector of Revenue is merely guarding against abuses of the refund privilege. To deny the Collector any discretionary authority and to make his duties in this regard merely ministerial would create a situation inconsistent with the claimant's burden of proving his refund. Of course, the Collector cannot under any circumstances exercise his discretion in an arbitrary and unreasonable manner.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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