

TAXATION:
SALES/USE TAXES:
REFUND:

The Director of Revenue may grant a refund of overpaid sales and use taxes as authorized by Section 144.190, RSMo 1959, only when a proper claim for said refund is filed within one year from the date of overpayment.

OPINION NO. 330

October 26, 1967

Mr. Thomas A. David
Director of Revenue
Department of Revenue
Jefferson Building
Jefferson City, Missouri



Dear Mr. David:

This is in answer to your request for an opinion of this office concerning whether a refund can be made to a pipeline company for use taxes which have been incorrectly paid since the year 1959.

The facts giving rise to this opinion are as follows. For several years, the Department of Revenue has collected taxes for the use of gas by pipeline companies used and consumed to drive the compression engines of such companies which engines are used to transport gas in this state. Recently, after consulting with this office, the Department decided, under the authority of *Kansas City Power and Light Co. v. Kansas City Public Service Co.*, Mo.Supp. 111 S.W.2d 516, that this use was not by a domestic, commercial or industrial consumer and was not taxable under Chapter 144.

The authority of the Director of Revenue to refund taxes wrongfully collected under Chapter 144, RSMo 1959, is governed by Section 144.190 which provides in part as follows:

"1. If a tax has been incorrectly computed by reason of a clerical error or mistake on the part of the director of revenue, such fact shall be set forth in the records of the director of revenue, and the amount of the overpayment shall be credited on any taxes then due from the person under sections 144.010 to 144.510 and the balance shall be refunded to the person, his administrators or executors, as provides for in section 144.200.

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"2. If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person under sections 144.010 to 144.510, and the balance shall be refunded to the person, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within one year from date of overpayment."

Since the director has determined that no tax is due on the use of gas as described above, it follows that previous payments of such taxes were erroneous and subject to refund in accordance with paragraph 2 above. But the method of recovery provided therein is exclusive and no taxes may be refunded unless a proper claim for refund has been filed within one year after the date of overpayment. *International Business Machines, Inc., v. State Tax Commission, Mo.Sup., 362 S.W.2d 635; Kleban v. Morris, Mo.Sup. 247 S.W.2d 832.*

The above mentioned cases also make it clear that this statute alone governs refunds for alleged overpayments of taxes imposed by Chapter 144, and Section 136.035, RSMo, allowing the refund of any overpayment or erroneous tax which the state is authorized to collect provided a claim for refund has been filed within two years after the date of overpayment, is not applicable.

It has been urged that the one year time limitation provided in paragraph 2 of Section 144.190 is not applicable when a tax was incorrectly computed by reason of a clerical error or mistake on the part of the director of revenue as provided in paragraph 1 thereof. It is not necessary to discuss this question since the overpayment in this case did not result from a clerical error or mistake by the director but from what has been discovered to be an erroneous interpretation of the law. In such circumstances it is the duty of the taxpayer to correct this mistake by appropriate proceedings. The fact that the director later voluntarily judges the tax to be erroneous does not relieve the taxpayer of his duty.

The provisions of Section 144.700, RSMo Supp. 1965, governing protest payments provide an alternative method of procedure to determine the liability of the taxpayer for taxes and is not relevant to refund claims under Section 144.190.

CONCLUSION

The Director of Revenue may grant a refund of overpaid sales and use taxes as authorized by Section 144.190, RSMo 1959, only when

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a proper claim for said refund is filed within one year from the date of overpayment.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John H. Denman.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Norman H. Anderson".

NORMAN H. ANDERSON
Attorney General