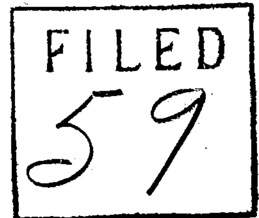
MOTOR VEHICLES) State Inspector of Oils cannot by rule extend
FUEL TAX:) provisions of law to require license from persons not included in statute.



May 27, 1946

Honorable Hugh I. McSkimming
State Inspector of Oils
Jefferson City, Missouri

Dear Sir:

Your opinion request of April 20, 1946, presents for our decision the question of whether under Section 24, (Laws of Missouri, 1943, page 696) of the Motor Fuel Tax Law, the administrator may by rule or regulation bring "sub-agents, sub-dealers, and sub-distributors" under his supervision and control with respect to their dealing in motor fuels.

You do not state what the nature of the contemplated regulation would be, but from attached correspondence it appears that you will require some kind of license with monthly reports accounting for the tax due upon the motor fuel sold or handled by such class of persons. We also draw upon said correspondence for a definition of "sub-agents, sub-dealers, and sub-distributors," and it appears that they are persons engaged in the business of selling motor fuel, but who do not first receive it in this State. In other words, the fuel which they handle is first imported into this State by some other person and sold to these "sub-agents, sub-dealers, and sub-distributors," who in turn sell, perhaps to other retailers or the consumers.

Section 24, Laws of Missouri, 1943, page 696, provides that:

> "The administrator shall prescribe and publish all needful rules and regulations for the enforcement of this Act."

Under this section, in order to determine just what rules and regulations the administrator may prescribe, we must look to the terms "of this act" for this statute limits such rules to

those which enforce the act, and also contains the further limitation that they must be "needful" rules.

In 1943, the General Assembly enacted a completely new "Motor Fuel Tax Law" which appears in Laws of Missouri, 1943, pages 670 to 699, inclusive. Comparison of this act with the provisions of the law as it existed theretofore, shows that the method employed in the new act for imposition of the tax and collection and enforcement of the payment of this revenue constitutes a drastic departure from the method theretofore employed. The old act (Sections 8411 to 8442, R. S. Mo. 1939, and amendments thereto) employed this method: It licensed distributors and dealers and the definition of distributor (Sec. 8411 as amended in Laws 1941, page 447) included every person who manufactured, refined, produced, compounded, shipped, transported or imported motor fuel in this State. A dealer was defined as every person, other than a distributor, who distributes or sells motor fuel within this State. The broad scope of these definitions included everyone who in anyway dealt in gasoline, except the consumer.

Prior to 1943 we are informed there were some 800 to 1000 distributors licensed and some 12,000 dealers who held licenses. The old act required each to make a monthly report to the State Oil Inspector, account for the gasoline handled by him and pay the tax due thereon or show that the same was paid to some other dealer or distributor who had in turn paid the same over to the State. The liability for the tax there imposed was fastened upon all who handled a particular gallon of gasoline, until someone of those handlers had paid the tax to the State Treasurer. That was the express ruling of the Court, as respects distributors, in State ex rel. Winn v. Banks, Mo. Sup., 145 S. W. (2d) 362-365, where it is said:

> ". . . there is nothing anywhere in Article 2 which authorizes one distributor to satisfy his obligation to pay a license tax to the State, by paying it or any part of it to another distributor. On the contrary, he is required by Section 7795 to '<u>pay to the State Treasurer</u>.'"

As respects dealers, Section 8442 provided a method whereby, in the event they paid taxes to another who failed to pay over to the State Treasurer, the tax could be assessed against them. And Section 8432 provided that in the event no

distributor or dealer paid the tax to the State then the person using the same for the purpose of operating a vehicle upon the highways was liable therefor.

The new act drasticly limits the class which is liable for the payment of the tax. Section 3 provides for the tax and imposes the liability in the following terms:

> "(b) For the privilege of receiving motor fuel to be sold for use in propelling motor vehicles upon the public highways of this State, there is hereby imposed upon every person receiving fuel in this State, a license tax equal to two cents (2¢) per gallon on all motor fuel received to be sold * * *" (Underscoring ours.)

We direct your attention particularly to the fact that under this, the tax imposition section, the tax is imposed upon the receipt of the motor fuel in this State.

Section 2 (g) provides that "For the purpose of determining liability for payment of the tax herein imposed, motor fuel shall be deemed to be 'received' as follows:" And then contains four sub-divisions, each detailing a particular operation which constitutes a "receipt" of motor fuel. We need not set each of those out in full. It suffices to say that the first covers the time fuel is withdrawn from storage tanks at a refinery, boat, barge or pipeline terminal in this State and designates the "receiver" as the person who was owner of the fuel immediately prior to the time of withdrawal, except where it is withdrawn for delivery to a licensed distributor, in which case the fuel is "received" by the distributor to whom delivered. The second definition of a "receipt," excluding the foregoing class, makes it at the time when motor fuel imported from without the State is unloaded from the transportation equipment (such as tank cars or trucks) and the person who is the owner thereof immediately after the unloading is the "receiver." The third class applies to those, other than those first mentioned, who produce, compound or blend fuel in this State and fuel is "received" by this group at the time of the producing, compounding or blending by the person who is owner of it at such time. The fourth class applies to those who acquire motor fuel by methods other than those detailed in 1,

2, and 3, unless the person from whom the same is acquired has paid or incurred liability with respect to the tax imposed."

Prior to thus setting up what constitutes a "receipt" of motor fuel, Section 2 (e) defines "distributor" to

> "..... mean and include any person who first receives motor fuel within this State (within the meaning of the word 'received' as hereinafter defined:)"

and Section 7 imposes the whole responsibility for making reports to the State and payment of the taxes due, upon those who are distributors.

This act is strictly a revenue measure, and every section contained therein is built upon the proposition that its requirements assist the administrator to determine the true amount of motor fuel each distributor has received in a given month and has accounted for the tax thereon to the State. Examples are Section 11, requiring reports from transporters; Section 12 requiring records of distributors and dealers to be kept for 5 years, and other sections, all of which provide methods whereby a cross check can be had on a distributor's report to determine its accuracy.

It is apparent from our comparison of the old act and the new that one of the major purposes of the new act was to strictly limit the class of persons who are subject to the jurisdiction of the administrator to those who "receive" motor fuel in this state, and that the new act purposely omitted a large class of persons who in other ways may sell or handle motor fuel, but who do not "receive" the same. The general rule in such cases is stated in 59 C. J., Sec. 122, page 112, as follows:

> "* * * A departmental regulation in effect imposing a requirement which was purposely omitted from the statute under which the regulation was drawn is invalid, * * *"

The power of the administrator under Section 24, supra, does not go beyond that of the law. He cannot require a person whom the law does not require to be licensed, to take

out a license. He cannot require a person to make reports whom the law does not require to make reports, and he cannot subject one to a liability for the tax when the law does not make him subject thereto.

Of course, what has been said here is based upon our conclusion, drawn from the attached correspondence as to what is meant by "sub-agents, sub-dealers, and sub-distributors." If the facts are that those so termed do "receive" fuel as that term is defined, then they are distributors and must comply with the law, and no regulation is needed to make it applicable to them.

Conclusion

It therefore is our opinion that persons who deal in motor fuel who do not "receive" the same as that term is defined in Section 2 (g), Laws of Missouri 1943, page 673, may not be required to be licensed, make reports, or be subjected to tax liability by a rule or regulation of the administrator under the rule making power vested in him under Section 24, Laws of Missouri, 1943, page 696.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
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