

APPROPRIATIONS ) Legislature may appropriate money for payment of  
TAXATION ) motor fuel tax refunds when claims are submitted in  
MOTOR FUELS ) accordance with Sections 16, 17, and 18, 1943 Laws,  
pages, 690, 691 and 692.

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May 25, 1949



Honorable Fred R. Columbo  
Chairman, House Appropriations Committee  
House of Representatives  
Jefferson City, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this Department which reads as follows:

"Our Appropriations Committee has before it quite a number of claims for Gasoline Tax Refunds, etc., from individuals and corporations desiring relief in the form of an appropriation from the Legislature, but we are confronted by Section 40, page 1442 of the 1945 Laws of Missouri, which reads as follows:

"Section 40. Claims against State to be presented to comptroller within two years. Persons having claims against the state shall exhibit the same, with the evidence in support thereof, to the comptroller, for his approval, within two years after such claims shall accrue, and not thereafter."

"We feel that these claims constitute honest, legal debts obligated by the statutes of Missouri, and are doubtful if the above mentioned section applies to acts of the Legislature. On this point we would be glad to have an opinion from you clearing up the matter, as we do not desire to appropriate money for these claims if they cannot legally be paid after enacted by the Legislature."

It appears from your request that in appropriating money for paying claims for refund of motor fuel taxes, the House Appropriations Committee is concerned about appropriating only enough money to pay those claims that are valid.

Regarding claims of this type your attention is directed to Sections 16, 17, and 18, Laws of Missouri, 1943, pages 690, 691, and 692, which declare the conditions upon which refunds of motor vehicle fuel taxes shall be made, and based upon these sections, previous appropriation bills have been passed by the General Assembly for the purpose of paying these tax refunds.

Section 16 provides for refunding of motor fuel taxes paid on motor fuels subsequently lost or destroyed, and reads as follows:

"Every person other than a distributor who shall have purchased motor fuel in this state and shall have paid the tax herein imposed on such motor fuel shall be entitled to a refund of the amount of tax so paid by him on any such motor fuel which is lost or destroyed, while he shall be the owner thereof, through theft, leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation, shrinkage or unknown cause; provided, such persons shall notify the administrator in writing of such loss or destruction and the amount of motor fuel lost or destroyed within thirty (30) days from the date of discovery of such loss or destruction, and provided further, that within thirty (30) days after such notice, such person shall file with the administrator an affidavit sworn to by the person having immediate custody of such motor fuel at the time of such loss or destruction, setting forth in full the circumstances and amount of the loss or destruction and such other information with respect thereto as the administrator may require.

"In the event that the administrator is satisfied that said fuel was lost or destroyed as claimed, he shall cause the amount of tax that said person paid, either directly or indirectly through the amount of the tax being included in the purchase price, at the time said fuel was purchased, to be refunded by a requisition upon the state auditor for a warrant on the state treasury for the amount due to said person."

Section 17 provides for refunding of taxes paid on motor fuels used for a purpose other than for operation of motor vehicles upon

the highways of this state, and in part reads:

"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; provided, however, that 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 act 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 said tax, upon presenting a claim therefor to the administrator.

"The claim to the administrator shall be in the form of an affidavit, stating the purpose for which said fuel was used, and shall be supported by the original sales slip or invoice covering the purchase of said 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.

\* \* \* \* \*

"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 said fuel. As evidence of this declaration of intention, the seller of said fuel shall, at the time of the sale, indicate, by stamp or otherwise, on the face of the original invoice or sales slip, a certification that such declaration of intention was made. \* \* \*

"All applications for refunds under this section must be filed with the administrator within one hundred twenty (120) 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 administrator, upon approving the same, shall cause the amount of the tax that such claimant paid to be refunded by a requisition upon the State Auditor, supported by said claim, for a warrant upon the State Treasurer, payable to said claimant. Said warrant shall be paid by the Treasurer out of any funds, appropriated by the Legislature for said purpose."

Section 18 provides for refund of taxes erroneously paid on motor fuel purchased by a distributor and reads:

"(a) That where, in any case, it appears to the satisfaction and approval of the administrator that any person, licensed and bonded in the State of Missouri as a motor fuel distributor, has paid to the State of Missouri, any motor fuel license tax in error, then, in that event, the administrator is hereby authorized and empowered to certify to the State Auditor a requisition for a warrant in favor of such person, for such sum or sums erroneously paid to the State of Missouri and the Treasurer of the State is hereby authorized and required to accept and pay the same out of any funds appropriated for refund purposes; or the administrator may elect, and is hereby authorized and empowered, in lieu of such warrant, to permit the deduction of such overpayments of motor fuel tax from subsequent reports as a credit against and upon any motor fuel tax which may thereafter be due and payable to the State of Missouri, by such person.

"(b) No refunds shall be made under the provisions of this section except upon a written claim therefor setting forth the circumstances by reason of which such refund shall be allowed. The claim shall be in such form as the administrator shall prescribe and shall be sworn to by the claimant, and filed with the administrator within five (5) years from the date of payment of the taxes illegally or erroneously collected."

The above quoted sections are the only ones relating to and providing for a refund of taxes paid on motor fuels. These sections set out the conditions upon which a tax refund can be obtained, and also prescribe the procedure that must be followed to obtain said refund.

It is therefore our view of the matter that the claims for refund of taxes paid on motor fuels which are legal, are those that are presented in the manner and under the conditions set out in the sections above cited. When these claims so submitted meet the satisfaction and approval of the administrator, a requisition for the amount of refund due the claimant is made on the State Treasury, and the same is paid out of the money appropriated for this purpose.

We do not believe that Section 40, supra, set out in your request is applicable to these types of claims. Section 40 and Sections 16, 17, and 18, supra, have application to a similar subject matter; i.e., claims against the State. However, Section 40 is general in character and the other sections are special, and have particular application to particular types of claims, and we believe constitute an exception to the general statute. Consequently, we view the law to be that the special statutes directly relating to claims for refunds of taxes paid on motor fuels would prevail. State ex rel. Buchanan County v. Fulks, 247 S.W. 129, 296 Mo. 14; State v. Mangiaracina, 125 S.W. (2d) 58, 344 Mo. 99; State ex inf. Barrett v. Imhoff, 238 S.W. 122, 291 Mo. 345.

In applying the rule of statutory construction, the Supreme Court in the Fulks case said at S.W., 1. c./132:

"The canons of construction require that the two statutes relating to the same subject should be harmonized and read together as constituting one law; the special being viewed as an exception to the general statute; \* \* \*"

Though not so stated in your request, it is our thought that at least some of the claims to which you refer have already cleared through the administrator of motor fuels, and the said claims have been presented in compliance with those sections of the statutes herein cited relating to refund of taxes paid on motor fuels. They unquestionably would be legal claims subject to payment from moneys appropriated by the Legislature.

Regarding claims generally now in your possession, if what you state about them is true, in that you say, "We feel these claims constitute honest, legal debts obligated by the statutes of Missouri," then, we believe that the Legislature would probably be justified in making an appropriation for their payment. In State ex rel. S. S. Kresge Co. v. Howard, 208 S.W. (2d) 247, the Supreme Court of Missouri at l. c. 250-251 said:

" \* \* \* The State itself, without intervention of judicial process which was not necessary under the circumstances, has seen fit to acknowledge its lawful obligation to relator by making the appropriation. And certainly the State may appropriate money for the payment of its lawful obligation unless, because of particular circumstances, there is some constitutional bar.

"Respondent contends the appropriation offends several constitutional provisions. Section 38 of Article III, Constitution 1945, Mo. R.S.A. denies the general assembly the power to grant public money or lend public credit to any private person or corporation. This prohibition does not apply to the appropriation to relator because it was in payment of a valid public obligation, and was not a grant or gift of public money. As was said in Re Monfort's Estate, 193 Minn. 594, 259 N.W. 554, 555, 98 A.L.R. 280, under a similar constitutional provision: 'There is nothing in the Constitution forbidding the state to recognize and pay its just debts.' \*\*\*\*"

However, we must point out that in the above case, the lawful obligation which the Legislature sought to pay by an appropriation was one that arose out of payment by relator of a tax illegally exacted; and, in view of the forfeitures and penalties which would have been sustained by the relator had the tax not been paid, the

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court held that the payment of the tax was made involuntarily. The court in this case recognized previous rulings made in other cases, that a tax voluntarily paid cannot be recovered, and it is our thought concerning the payment of motor vehicle fuel taxes that they are originally paid voluntarily; nor would their nonpayment result in any hardship in the nature of forfeitures and penalties as would have been sustained by the relator in the Kresge case.

Lacking further information regarding the claims you now have under consideration and particularly the conditions and circumstances under which the taxes were originally paid, we can only advise you as to those claims for tax refunds which have been submitted in accordance with Sections 16, 17, and 18 of the 1943 Laws, supra.

CONCLUSION.

It is therefore our opinion that claims for refund of taxes paid on motor fuels which are presented within the time, under the conditions, and in the manner provided in Sections 16, 17, and 18, Laws of Missouri, 1943, pages 690, 691, and 692, are legal claims for which the Legislature could appropriate money for their payment. It is our further opinion that Section 40, page 1442, Laws of Missouri, 1945, is not applicable to these types of claims.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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