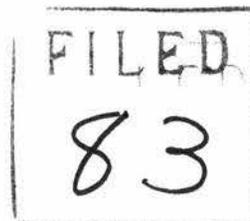


TAXATION: H.C.S.H.B. 185, 65th G.A., still permits refunds for motor fuel sold for non-highway use.

October 10, 1949



Honorable Forrest Smith  
Governor of Missouri  
Jefferson City, Missouri

Dear Governor Smith:

We have received your request for an opinion of this Department, which is as follows:

"Will you please furnish me with an official opinion on the question of whether or not non-highway users of motor vehicle fuels will be entitled to a refund of the taxes paid under House Committee Substitute for House Bill No. 185, as passed by the 65th General Assembly."

Section 3 of H.C.S.H.B. No. 185 of the Sixty-fifth General Assembly, omitting sub-paragraphs (g) and (h), not here relevant, reads as follows:

"Section 3. (a) In order to provide funds for the construction and maintenance of the public highways of this state and to pay the principal and interest on the road bonds of the state there is hereby provided for a license tax to produce a sum equal to four cents (4¢) on each gallon of motor fuel used in propelling motor vehicles upon the public highways of Missouri to be collected as hereinafter provided.

"(b) For the privilege of receiving motor fuel, there is hereby imposed upon every person receiving fuel in this state, a license tax equal to four cents (4¢) per gallon on all motor fuel received to be sold for use in propelling motor vehicles upon the public highways of this state. It shall be presumed that

all motor fuel received in this state is to be sold for use and will be used in propelling motor vehicles upon the public highways.

"(c) The distributor receiving motor fuel in this state shall be liable for said license tax on the gross number of gallons of fuel received by him as shown by invoices thereof less deductions in this act provided for, and shall pay said license tax to the administrator.

"(d) Every distributor who shall receive motor fuel in this state, shall, except as otherwise provided herein, upon selling such fuel, add to the selling price of each and every gallon of such fuel the per gallon amount of said tax and collect the same from the purchaser thereof. Thereafter, except as otherwise provided herein, if said fuel is again sold the per gallon amount of the tax shall be added to the selling price of the fuel by any person who shall sell the same, and shall be collected from the purchaser, and so on, so that the ultimate consumer, shall bear the burden of the tax as a part of the price of the fuel he purchases.

"(e) Every person purchasing motor fuel in this state from any distributor or other person, shall pay, except as otherwise provided herein, to the distributor or other person from whom said fuel is purchased, the amount of the license tax which the distributor or other person is required by this act to add to the selling price of the motor fuel. It shall be presumed that all fuel purchased by any person in this state is intended to be used and will be used to propel motor vehicles upon the public highways of this state.

"(f) No tax shall be imposed, charged or collected with respect to the following:  
(1) Motor fuel exported or sold for export

from this state to any other state, territory, or foreign country, except in the usual and ordinary fuel supply tank connected with the engine of a motor vehicle leaving this state.

"(2) Motor fuel received by any licensed distributor and thereafter lost or destroyed while such distributor is the owner thereof as a result of theft, leakage, fire, accident, explosion, lightning, flood, storm, act of war, or public enemy, or other like cause.

"(3) Sales or exchanges of motor fuels between licensed distributors, as provided in the second sentence of Section 3(g)."

(Emphasis ours.)

When originally passed by the House of Representatives, Section 3(b) reads as follows:

"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 four cents (4¢) per gallon on all motor fuel received to be sold for use in propelling motor vehicles upon the public highways of this state. It shall be presumed that all motor fuel received in this state is to be sold for use and will be used in propelling motor vehicles upon the public highways."

(Emphasis ours.)

Section 3(f) also contained the following additional exemptions:

"(2). Motor fuel sold to the United States of America or any agency or instrumentality thereof, or to the state, to any of the political subdivisions of the state or to any municipality in the state.

"(3). Motor fuel sold to any post exchange or concessionaire on any Federal reservation within this state; but the tax on motor fuel so sold, to the extent permitted by Federal law, shall be paid to the state by such post exchange or concessionaire.

"(4). Motor fuel sold to any person for use in the performance of any such person's cost-plus-a-fixed-fee or fixed percentage contract with the United States, or cost-plus-a-fixed-fee or fixed percentage contract under such contract, for the construction, manufacture or operation of the United States Government defense projects connected with the prosecution of any war declared by Congress.

"(5). Motor fuel used by any licensed distributor for any purposes other than the generation of power for the propulsion of motor vehicles upon the public highways."

(Emphasis ours.)

These provisions of sections 3(b) and 3(f), as originally passed by the House of Representatives, are identical with those found in the corresponding sections of the 1943 Motor Fuel Tax Law (Laws of 1943, p. 670), except for the change in the amount of the tax and for the addition in section 3(f) (2) of an exemption applicable to motor fuel sold to the state or to any political subdivision or municipality in the state.

Senate Substitute Amendment No. 1 eliminated the words "to be sold for use in propelling motor vehicles upon the public highways of this state", where they first appeared in the House version of that section and also eliminated exemption paragraphs numbered 2, 3, 4, and 5, in section 3(f) of the House version. Senate Journal, 65th General Assembly, June 29, 1949, p. 1231.

No change whatsoever was proposed or made in section 17 of the 1943 act, supra, which section provides for refund of tax paid on fuel bought for other than highway use, as follows:

"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 sales, (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.

"The forms upon which claims are to be made shall be prescribed by the administrator, and he shall keep the clerks of the County Courts and the Comptroller of the City of St. Louis supplied with quantities of said forms.

"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. Said certification shall be in substantially the following form:

"The undersigned, as agent for....., the seller, hereby certifies that the purchaser of the motor fuel invoices hereon at the time of purchase expressly declared it as his intention to use such motor fuel for a purpose other than propelling motor vehicles upon the public highways of this state, and declared his intention to file a claim for refund of the tax included in the purchase price.

.....  
Agent for Seller.'

"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."

Therefore, determination of your question depends upon the effect of the elimination from Section 3(b) of the words "to be sold for use in propelling motor vehicles upon the public highways of this state," where those words first appeared in that section of the 1943 act and also in the original House version of the act here under consideration.

As pointed out above, no change was made in section 17, which provides for refunds upon purchasers of gasoline not purchased for use in propelling vehicles upon the state highways. Furthermore, Section 3(a) provides that a tax is provided to produce a sum equal to four cents per gallon of "motor fuel used in propelling motor

vehicles upon the public highways of Missouri to be collected as hereinafter provided." Section 3(b) provides that the tax is imposed "on all motor fuel received to be sold for use in propelling motor vehicles upon the public highways of this state."

None of the exemptions which were eliminated by Senate Amendment No. 1 from Section 3(f) referred to non-highway use, except sub-paragraph (5), set out above. That provision was, however, applicable only to licensed distributors, and it can hardly be claimed that its elimination evidences any intention on the part of the Legislature to eliminate refunds for non-highway use generally.

Of course, the primary guide in the construction of statutes is the intention of the Legislature. However, such intention must be found in the words used, if possible. *Haynes v. Unemployment Compensation Commission*, 353 Mo. 540, 183 S.W. (2d) 77. Here, the only matter from which any intention on the part of the Legislature to eliminate refunds for non-highway use of motor fuel may be deduced is the striking out of the words "to be sold for use in propelling motor vehicles upon the public highways of this state" in the first part of Section 3(b), supra. However, the provisions which remained after that was done still indicate clearly that the tax is intended to apply only on fuel sold for use in propelling vehicles on the highways. The act by its terms still expressly so provides in Sections 3(a) and 3(b), quoted above.

Furthermore, no action was taken concerning Section 17 of the 1943 Act, which provides for refunds for non-highway use. "The law does not favor repeals by implication. If by any fair interpretation all the sections of a statute can stand together, there is no repeal by implication." *State v. Bader*, 336 Mo. 259, 78 S.W. (2d) 835, l.c. 839. In view of the provisions remaining in Section 3 providing that the tax is imposed upon the sales of fuel to be used in propelling motor vehicles on the highways, we do not see how it may be urged that Section 17 has been repealed by implication.

#### CONCLUSION

Therefore, this Department is of the opinion that H.C.S.H.B. No. 185 of the Sixty-fifth General Assembly did not eliminate

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refunds of motor fuel taxes on motor fuel purchased for other than use in propelling motor vehicles on the public highways of this state.

Respectfully submitted,

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APPROVED:

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