

Motor Vehicle Fuel Tax.

County not entitled to a refund of motor vehicle fuel tax by virtue of being a subdivision of the State. County entitled to refund of motor vehicle fuel tax if fuel is not used to operate a motor vehicle over a public road as such terms are defined by the taxing statute.

February 27, 1951.

Hon. J. W. Thurman,
Prosecuting Attorney
Jefferson County,
Hillsboro, Missouri.



3-6-51

Dear Sir:

In reply to your recent request for an opinion from this office you state your request as follows:

"I am furnishing you herewith copy of a letter written by the County Clerk of this county to the Office of the State Inspector of Oils of Jefferson City, together with a copy of his reply thereto.

"It is the opinion of the Court that they should be entitled to a refund of the gasoline tax paid on all gasoline used in their tractors and road grading equipment under and by virtue of the provisions of Section 142.030 (5), which provides:

'No tax shall be imposed, charged or collected with respect to the following:***
(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.'

"It is the court's opinion and I concur therein, that only the gasoline used to propel the trucks of the County Highway Department should be subject to the imposition of this tax. Or, in other words, the county should be entitled to a refund of the tax paid on all gasoline used in any of their equipment other than their motor trucks.

"We should be glad to have your opinion on this subject."

The letters to which you refer addressed to the State Inspector of Oils and his reply read as follows:

"The Jefferson County Court has requested me to write you regarding a refund on state gasoline tax paid by the County for the operation of County road equipment used in the maintenance and building of County roads.

"According to Form eight Revised Dec. 1, 1943, Sec. 17, the original customers invoice shall contain the 'name and address of purchaser (which must be the name of the claimant)'. This request would be difficult for the court to fulfill for the reason that the gasoline would be delivered to various jobs over the County and signed for by the Highway Engineer or a road foreman acting as an agent for the County, and the claim for the refund would be made by the Presiding Judge of the County Court. Under this arrangement it would be impossible for the claimants name to be the same as the name of the person who signs the invoice.

"Also, the affidavit portion of the application blank contains the following language 'and that no portion of such Motor Vehicle Fuel has been or will be used on the public roads of the State of Missouri'. Does this mean that the gasoline used by county trucks and other equipment is not exempt if used on public roads of the State of Missouri? It would be very difficult for county rolling equipment to move from job to job and haul gravel from distant points without using public roads of the State of Missouri.

"The County Court will be pleased to receive an explanation of this application for refund with reference to it's relationship to tax refund for gasoline used by County trucks and equipment in the maintenance and repair of County Roads."

"For your information we wish to advise that no county court or any political subdivision is entitled to a refund on gasoline when used to build or maintain streets, roads, or highways.

"In fact there is no refund on gasoline used for highway purposes regardless of who uses it. The Highway Department, Highway Patrol, and all state-owned vehicles pay this tax.

"Hoping this will clarify the situation, I remain, "

2-27-51

The Revised Statutes of Missouri, 1949, Sections 142.010 to 142.350 levy a tax on Motor Vehicle Fuel; included therein as a type of fuel on which the tax is levied is gasoline; Sections 142.360 to 142.490 levies a Motor Fuel Use Tax which includes such fuels as Butane and diesel oil used for propelling motor vehicles. For an understanding of these taxing statutes you should keep in mind there are two different taxing provisions with a different method of collection provided for each tax and a different method of refund provided.

The section to which you direct our attention relates to an exemption allowed to a licensed distributor, under the Motor Vehicle Fuel Tax; a licensed distributor is defined by Section 142.010 (3) RSMo. 1949, as any person holding an unrevoked distributor's license issued by the collector of revenue. There appears to be no relation between the section quoted in your letter and the question presented by you, unless your county is a licensed distributor of motor fuel.

As I understand the question presented by the correspondence quoted above your question may be restated as follows: Is a County, acting through the county court, entitled to a refund of the tax imposed as the Motor Vehicle Fuel Tax (Chapter 142, RSMo. 1949) on gasoline which the county has purchased and used in equipment used in the construction, repair and maintenance of county roads?

In an opinion rendered by this office dated June 6, 1945, to Mr. George Metzger, then State Inspector of Oils, this office ruled that a county of this state was not exempt from the payment of the motor vehicle fuel tax by virtue of being a political subdivision of the state. This opinion did not discuss the question of whether the county would be exempt from payment of the tax by virtue of using the fuel for "non-highway use", but only held that a county was not exempt by virtue of being a political subdivision of the state.

This office further ruled in an opinion dated October 24, 1949, addressed to Mr. Duncan R. Jennings, Prosecuting Attorney for Montgomery County, that a county is not required to pay the Motor Fuel Use Tax for fuel used or consumed by an internal combustion engine in the repair and maintenance of county roads. A copy of that opinion is enclosed; you will note that opinion deals with the Motor Fuel Use Tax which includes such fuels as diesel oil and butane but does not include gasoline, which is included under the Motor Vehicle Fuel Tax.

In order to answer the question presented by your opinion request it is necessary for us to construe the statute here involved, keeping in mind the intent of the legislature in enacting the stat-

ute as that intent is expressed in the Act levying the tax. A primary rule in the construction of statutes was stated by the Supreme Court of Missouri in the case of American Bridge Co. v. Smith, 179 S.W. (2d) 12, l.c. 15, as follows:

"The primary rule of construction of statutes is to ascertain the lawmakers' intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and rational meaning and to promote its object,* * *".

Following the above-quoted rule we refer to the Motor Vehicle Fuel Tax Act as a whole (Chapter 142, RSMo. 1949) and particularly to certain sections within that chapter that have relevancy to your question.

Section 142.010 defines the motor vehicle fuel subject to the tax in question in the following words:

"When used in this law the following words shall have the meaning indicated:

'(4) MOTOR FUELS,'

(a) All products commonly or commercially known or sold as gasoline (including casing-head and absorption or natural gasoline) regardless of their classifications or uses; and

(b) Any liquid which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials designation D-86) shows not less than ten per cent distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees centigrade) and not less than ninety-five per cent distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees centigrade); except that the term "motor fuels" shall not include naphthas and solvents, as defined in subdivision (6) of this section; liquefied gases which would not exist as liquids at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per

square inch absolute; denatured wood or ethyl alcohol, ether turpentine, or acetates and products having a Reid vapor pressure of thirty pounds or more at one hundred degrees Fahrenheit except when such naphthas and solvents, liquefied gases, denatured wood or ethyl alcohol, ether, turpentine or acetates and products having a Reid vapor pressure of thirty pounds or more at one hundred degrees Fahrenheit, are used as an additive in the manufacture, compounding, or blending of a liquid within (a) or (b) above, in which event the quantity so used shall be deemed to be motor fuel."

Subdivision (5) of this section defines a "motor vehicle" as follows:

"(5) 'Motor vehicle,' all vehicles except those operated on rails, which are propelled by internal combustion engines or motors and are used or are designated for use in the transportation of a person or persons or property upon public highways."

Subsection (8) of this section defines "Political subdivisions of the state" in the following words:

"(8) 'Political subdivisions of the state', as used herein is intended to be all inclusive and shall include any county, township, road district, sewer district, school district, municipality, town or village, or any other public corporation, whether of like character as those heretofore enumerated or not, that is an agency for the administration of civil government."

This subsection (8), read in conjunction with subsequent sections does not exempt political subdivisions of the state from liability to the tax.

Subsection (9) of this section defines "public highways" in the following words:

"(9) 'Public highways,' every way or place of whatever nature, generally open to the use of the public as a matter of right, for the purposes of vehicular travel, and notwithstanding that the same may be temporarily closed for the purposes of construction, reconstruction, maintenance or repair."

Section 142.020 RSMo. 1949, imposes the tax, provides for its collection and delineates the purposes of levying the tax as follows:

"1. 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 two cents on each gallon of motor fuel used in propelling motor vehicles upon the public highways of Missouri to be collected as herein provided.

"2. 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 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.

"3. 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 law provided for, and shall pay said license tax to the collector of revenue.

"4. Every distributor who shall receive motor fuel in this state, shall, except as otherwise provided in section 142.030, 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 in section 142.030, 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.

"5. Every person purchasing motor fuel in this state from any distributor or other person, shall pay, except as otherwise provided in section 142.030, 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 chapter 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.

"6. All money collected by any distributor as a part of the sale price of fuel, that is added to the selling price to cover the license tax required to be so added by this chapter, shall, be and remain, except the three per cent allowance authorized in subdivision (1) (b) of subsection 1 of section 142.140, public money, the property of the state of Missouri, unless and until the distributor collecting said money shall pay to the collector of revenue the license tax imposed upon him that is measured by the receipt of the fuel which he sold and upon which sale the money was collected."

Section 142.030 RSMo. 1949 specified the exemptions allowed from this tax as follows:

"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 sold to the United States of America or any agency or instrumentality thereof;

"(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.

"(6) 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;

"(7) Sales or exchanges of motor fuels between licensed distributors, as provided in subsection 2 of section 142.040."

Section 142.230 provides for a refund of the motor fuel tax to a person (and by definition of "person" in section 142.010 (7) a county would be included) who shall buy and use motor fuel for non-highway use as follows:

"1. 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.

"2. 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 chapter 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 the tax, upon presenting a claim therefor to the collector of revenue.

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

"4. The forms upon which claims are to be made shall be prescribed by the collector of revenue, 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.

"5. 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 the fuel. As evidence of this declaration of intention, the seller of the fuel, at the time of the sale, shall indicate, by stamp or otherwise, on the face of the original invoice or sales slip, a certification that such declaration of intention was made. The certification shall be in substantially the following form:

"The undersigned, as agent for _____, the seller, hereby certifies that the purchaser of the motor fuel invoiced 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.'

"6. All applications for refunds under this section must be filed with the collector of revenue within one hundred and twenty 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 collector of revenue, upon approving the same, shall cause the amount of the tax that such claimant paid to be refunded by a requisition upon the state comptroller, supported by the claim, for a warrant upon the state treasurer, payable to said claimant. The warrant shall be paid by the treasurer out of any funds appropriated by the legislature for such purpose."

Since this section creates a presumption that all motor fuels as defined by this chapter which are distributed or sold in this state have been sold for use in propelling motor vehicles upon the public highways of this state, the burden is upon the purchaser of such fuels to establish that he is entitled to a refund of any tax paid at the time of purchase.

Your attention is particularly invited to paragraph 2 of section 142.230 which is underscored in the above quotation and provides 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 has paid the tax shall be reimbursed and repaid the amount of the tax. A "motor vehicle" as defined by paragraph (5) of section 142.010 quoted above includes all vehicles, except those operated on rails, which are propelled by internal combustion engines or motors and are used or designed for use in the transportation of a person or persons or property upon public highways. Motor fuel which is used in a motor or engine which is not included within the definition of the statute would not be subject to the tax and a refund thereon should be made as provided by the statute for making refunds. This would include all equipment used by the county in constructing or repairing roads which is not designed to be used for transportation of persons or property upon the roads. Whether such equipment is so designed or used is a question of fact.

By the provision of this paragraph any person who shall use motor fuel as defined by this act for any purpose whatever, except in the operation of motor vehicles upon the highways of the state who shall have paid the tax should be reimbursed and repaid the amount of the tax as provided by the statute.

Whether or not one is using the highways as defined by this section for the purpose of operating a motor vehicle thereon is also a question of fact.

Hence, before a person is entitled to a refund of the tax paid under this motor fuel tax act by virtue of section 142.230 it must be shown that the person requesting the refund has not used the motor vehicle fuel in the operation of a "motor vehicle" upon the highways of this state. Any fuel used in motor vehicles engaged in hauling materials over the public roads even though such materials are to be used in the repair, maintenance, or construction of roads would be subject to the tax. It also follows that fuel used in internal combustion engines or motors which are not being operated over roads or streets is not subject to the tax imposed by this act.

We are unable to find a case decided in this state directly discussing the question herein involved. However, in the case of State ex rel Winn v. Banks, 145 S.W.(2d) 362; 346 Mo. 1177, the state Supreme Court had for consideration an action to collect the tax on gasoline and in that case said at l.c. 365:

"It is apparent, from reading the provisions of these sections together, as they now stand, that the intention of the legislature was to require the payment of two cents on each and every gallon of gasoline sold or used in this state to operate motor vehicles over the roads, streets or highways of this state."

This intention is expressed by section 142.020, quoted supra, which levies the tax on "each gallon of motor fuel used in propelling motor vehicles upon the public highways of Missouri."

The answer to your question then depends upon whether the fuel is being used in a "motor vehicle" as defined by the taxing statute and second whether such motor vehicle is propelled or operated over a public road.

The basis for refund of the tax imposed by this act is not that the motor fuel is being used in the repair, maintenance or construction of a public road but whether the motor fuel is being used to operate a motor vehicle as defined by this act over a road dedicated to public use. If the motor fuel is not being used to operate such a motor vehicle over a public road it appears

the Legislature has expressed the intention that it should not be subject to the motor fuel tax and in those cases in which such tax has been paid a refund should be made. The determining factor is not that the motor fuel is being used in the repair, construction or maintenance of a road but whether it is being used to operate a motor vehicle over a public road.

CONCLUSION.

A county is not entitled to a refund of the tax imposed by the Motor Vehicle Fuel tax on gasoline used in trucks and equipment used in maintaining, repairing or constructing public roads by virtue of being a political subdivision of the state. However, a person, including a county, who uses motor fuel on which the motor vehicle fuel tax has been paid is entitled to be reimbursed and repaid such tax upon establishing that such fuel was not used to operate or propel a motor vehicle, as defined by the taxing statute, over a public road. If the motor fuel is being used to operate a motor vehicle designed to be used for carrying persons or property over a public road then such fuel is subject to the tax imposed by the motor vehicle fuel tax, sections 142.010 to 142.350 RSMo. 1949. If the motor fuel is not being used in equipment defined as a motor vehicle and is not being operated or propelled over a public road then upon establishing such fact the county is entitled to a refund of the tax paid by it.

Respectfully submitted,

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APPROVED:



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