

TAXATION:
MOTOR FUEL:

Four questions relating to House Bill
No. 180 pertaining to a tax on motor
fuel.

July 16, 1952

7-2352



Honorable G. H. Bates
Director of Revenue
Capitol Building
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of
this department. Your request reads as follows:

"As I am charged with the collection of the
tax imposed by House Committee Substitute
for House Bill No. 180 enacted by the 66th
General Assembly, I wish to submit for your
opinion the following questions:

"1. Is the tax imposed by said House Bill
No. 180 a sales tax or a use tax within the
meaning of Art. III, Sec. 39 (10), of the
Missouri Constitution of 1945, or is it a
business, license or occupation tax, or is
it a tax for the privilege of using the
highways?

"2. Is the United States Government, its
agencies and instrumentalities, exempt from
the payment of the tax imposed by said bill?

"3. Is the tax applicable to motor fuel im-
ported into the State of Missouri by the
Federal Government itself?

"4. Am I correct in assuming that said House
Bill No. 180 will be effective at 12:01 a.m.
on July 29, 1952?

"I would appreciate an early reply in order
that I may advise the distributors and dealers

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who, under the law are required to collect the tax, whether the tax is applicable to sales to the Federal Government, its agencies or instrumentalities."

The first question deals with Art. III, Section 39(10), Constitution of Missouri 1945 in regard to whether or not the tax imposed by House Bill No. 180 falls within the prohibition therein contained. In answer to this question we are enclosing a copy of an opinion to Mr. George Metzger, State Inspector of Oils, July 6, 1945. This opinion states that the majority of cases hold that said tax is either a compensation tax for the privilege of using the public highways or a license tax on the distributor measured by the sales of gasoline and that under either classification said tax would not fall within the prohibition contained in Article III, Section 39(10), Constitution 1945.

You next inquire as to whether the United States Government, its agencies and instrumentalities are exempt from the payment of the tax. It is noted that the law as contained in Chapter 142, RSMo 1949, and prior to amendment by House Bill No. 180, exempts from taxation "motor fuel sold to the United States of America or any agency or instrumentality thereof" and "motor fuel sold to any post exchange or concessionaire or any federal reservation within this state." House Bill No. 180 does not contain these exemptions, however, we do not believe that by reason thereof the state may now tax the United States Government, its agencies or instrumentalities.

The sovereignty of a state extends to everything which exists by its own authority but it does not extend to those means which are employed by congress to carry into execution the powers conferred upon that body by the Constitution of the United States. It is well settled that a state has no power to tax the means which the federal government employs to carry on its proper functions. 26 R.C.L., Section 71, page 95.

This principle has been given a wide application and particularly to statutes like the one questioned. In the case of Panhandle Oil Co. v. Mississippi, 147 Miss. 663, the Supreme Court of Mississippi had before it a question similar to the one which you have proposed. The State of Mississippi had provided that any person engaged in the business of distributing gasoline, retail dealers in gasoline, shall pay for the privilege of engaging in such business a tax of one cent (1¢) per gallon upon the sale of gasoline. A distributor had sold gasoline to certain agencies of the United States and the state sought to collect said tax. The Supreme Court held that the tax was imposed upon the distributor and it was not a direct tax against the instrumentality of the federal government and therefore the state was entitled to recover. The case was then appealed to the United States

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Supreme Court and the holding of the Mississippi Supreme Court was reversed in an opinion by Mr. Justice Butler. In its opinion the court said:

"* * *The states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax means used for the performance of Federal functions. * * *While Mississippi may impose charges upon petitioner for the privilege of carrying on trade that is subject to the power of the state, it may not lay any tax upon transactions by which the United States secures the things desired for its governmental purposes.

"The validity of the taxes claimed is to be determined by the practical effect of enforcement in respect of sales of the government. *Wagner v. Covington*, 251 U.S. 95, 102, 64 L. ed. 157, 167, 40 Sup. Ct. Rep. 93. A charge at the prescribed rate is made on account of every gallon acquired by the United States. It is immaterial that the seller and not the purchaser is required to report and make payment to the state. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests. The amount of money claimed by the state rises and falls precisely as does the quantity of gasoline so secured by the Government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion of the United States, of its constitutional powers to operate the fleet and hospital.

* * * * *

"The exactions demanded from petitioner infringe its right to have the constitutional independence of the United States in respect of such purchases remain untrammelled. *Osborn v. Bank of United States*, 9 Wheat, 738, 867, 6 L.ed. 204, 234; *Western U. Teleg. Co. v. Texas*, supra. Cf. *Terrace v. Thompson*, 263 U.S. 197, 216, 68 L. ed. 255, 274, 44 Sup. Ct. Rep. 15. Petitioner is not liable for the taxes claimed."

We believe that the above case is clear-cut and controlling on the question at hand and that the state cannot, under the authority of House Bill No. 180 exact a tax from a distributor on sale by such

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distributor to the United States Government, its agencies or instrumentalities.

We are further of the opinion that the United States Government, its agencies or instrumentalities located within this State cannot be taxed as a distributor as defined in Section 142.010, RSMo 1949, since, as previously stated, the State has no authority to tax the instrumentality which the federal government employs to carry on its proper functions.

In regard to the effective date of this law, Section 1.130, RSMo 1949, is as follows:

"A law passed by the general assembly shall take effect ninety days after the adjournment of the session at which it is enacted; provided, however, if the general assembly recesses for thirty days or more, it may prescribe by joint resolution that laws previously passed and not effective shall take effect ninety days from the beginning of the recess, subject to the following exceptions:

"(1) A law necessary for the immediate preservation of the public peace, health or safety, which emergency must be expressed in the body or preamble of the act and which is declared to be thus necessary by the general assembly, by a vote of two-thirds of its members elected to each house, said vote to be taken by yeas and nays, and entered on the journal or a law making an appropriation for the current expenses of the state government, for the maintenance of the state institutions or for the support of public schools, shall take effect as of the hour and minute of its approval by the governor; which hour and minute may be endorsed by the governor on the bill at the time of its approval;

"(2) In case the general assembly, as to a law not of the character herein specified, shall provide that such law shall take effect on a date in the future subsequent to the expiration of the period of ninety days herein mentioned, said law shall take effect on the date thus fixed by the general assembly;

"(3) In the case the general assembly shall provide that any law shall take effect as provided in subsection (1) of this section, the general assembly may provide in such law that the operative date of the law or parts of the law shall take effect on a date subsequent to the effective date of the law."

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As to the application of House Bill No. 180, no effective date has been stated in the bill. Under the statute cited above it must go into effect July 29, 1952, that date being ninety days after the adjournment of the session in which it was enacted.

CONCLUSION

Therefore, it is the opinion of this department that:

(1) House Bill No. 180, amending Chapter 142, RSMo 1949, does not fall within the prohibition contained in Article III, Section 39(10), Constitution of Missouri 1945.

(2) That the State of Missouri may not exact a tax such as is contained in House Bill No. 180 on sales of gasoline to the United States Government, its agencies and instrumentalities.

(3) That the State of Missouri has no authority to impose a tax upon the federal government for motor fuel imported into the State of Missouri by the federal government.

(4) That House Bill No. 180 will become effective on July 29, 1952, such date being ninety days after the adjournment of the 66th General Assembly by which it was enacted.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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