

C. H. 10/28  
TAXATION: Refund of Missouri Motor Fuel Tax may not be made to  
REVENUE: Veterans Administration from money appropriated under  
Section 3.060 of House Bill No. 172 of the 64th General Assembly.

July 22, 1948

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Honorable B. H. Howard  
Comptroller  
Department of Revenue  
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this Department reading as follows:

"We are enclosing copy of a claim for motor fuel tax refund by the Kansas City Office of Veterans Administration. This claim covers the tax on fuel purchased by veterans who were authorized to travel at government expense for various purposes. The claim is supported by receipts for the individual purchases.

"We will appreciate an opinion as to whether or not a claim of this nature can be paid under the appropriation for refunding of gasoline taxes, Section 3.060, House Bill 172, 64th. General Assembly."

We have examined the correspondence attached to your request, together with a photostatic copy of the claim for refund. It is noted that the gasoline tax included in the claim for refund has been paid by employees of the Veterans Administration in connection with travel at government expense. Such employees are reimbursed for such expenditures by the employer. The basis for the refund is said to be Public Law No. 819 of the 76th Congress, approved October 9, 1940.

Section 3.060 of House Bill No. 172 of the 64th General Assembly reads as follows:

"There is hereby appropriated out of the State Treasury, chargeable to the State Highway Department Fund, One Million Fifty Thousand Dollars (\$1,050,000.00) for the purpose of refunding of gasoline taxes, as provided by law, for the period beginning July 1, 1947, and ending June 30, 1948."

We have examined the Federal statute referred to, as well as numerous cases and text authorities, respecting the power of the various states to impose excise taxes, such as the Missouri Motor Fuel Tax, upon purchases, directly or indirectly paid for out of public funds of the United States. However, in view of the wording of the Missouri statutes relating to such tax, we do not consider it necessary to determine whether or not such tax may lawfully be collected in the first instance. It is our thought that no provision has been made for a refund under the circumstances outlined in the present claim.

Section 8411.2, Mo. R.S.A., which levies the Missouri Motor Fuel Tax, contains the following sub-section (f):

"(f) No tax shall be imposed, charged or collected with respect to the following:  
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"(2) Motor fuel sold to the United States of America or any agency or instrumentality thereof."  
(Underscoring ours.)

Assuming, but not so determining, that sales of motor fuel made to employees of the Veterans Administration are within the purview of the above quoted exemptions provision, it becomes apparent that such tax should not have been collected in the first instance. It therefore but remains to be determined whether or not any provision has been made for the refund of such tax so paid.

We have examined the pertinent sections relating to refunds, and do not find that any of such statutory provisions apply to the facts now under consideration. For instance, sub-section (g) of Section 8411.2, Mo. R.S.A. provides that a distributor who has made a sale exempted under the provisions of paragraph 2 of sub-section (f) quoted, supra, may deduct

from the gallonage on which his liability is computed for payment of the motor fuel tax, all gallonage so sold. This provision reads, in part, as follows:

"(g) Each distributor having received motor fuel which is thereafter exported, sold, used, lost or destroyed, as set forth under paragraphs (1) to (6) inclusive above shall, upon furnishing such proof thereof as the administrator shall by regulation require, be entitled to deduct from the gallonage on which his liability for payment of the motor fuel tax would otherwise be computed all gallonage so exported, sold, used, lost or destroyed. \* \* \* ."

Further, Section 8411.15, Mo. R.S.A., provides for the refund of tax collected on motor fuel thereafter lost or destroyed. To the same effect is Section 8411.16, Mo. R.S.A., providing for the refund of the amount of tax paid upon fuel not used in motor vehicles operated upon the public highways of the state. Section 8411.17, Mo. R.S.A., authorizes the refund of taxes erroneously paid the State of Missouri by distributors. It therefore appears that no provision has been made for the refund of taxes paid upon transactions exempted under the provisions of paragraph 2 of sub-section (f) of Section 8411.2, Mo. R.S.A.

#### CONCLUSION.

In the premises, we are of the opinion that refund of Missouri Motor Fuel Tax may not be made out of funds appropriated under Section 3.060 of House Bill No. 172 of the 64th General Assembly to the Veterans Administration, based upon taxes paid by employees of such Federal agency when engaged in travel authorized at government expense, even though reimbursement of such payment is made by such employer.

Respectfully submitted,

APPROVED:

WILL F. BERRY, Jr.  
Assistant Attorney General

J. E. TAYLOR *J.E.*  
Attorney General

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