

MAINE STATE LEGISLATURE

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July 30, 1925

To Elbert D. Hayford, State Auditor
Re: Gasoline Tax - Federal vehicles

. . . You ask first, if you are authorized and required to collect a tax of three cents per gallon on gasoline, when such gasoline is used in automobiles owned by the United States Customs Service and operating upon the highways of this State, and second, if you are authorized to rebate two cents per gallon on gasoline purchased in the State of Maine by Canadian fishermen for use in their motor boats or if you shall rebate three cents per gallon on such gasoline.

Section 1 of Chapter 224 of the Public Laws of 1923 provides that the term "distributor" shall mean any person, association, firm or corporation, wherever resident or located, who imports, causes to be imported for sale or for his or its own use (with the exceptions herein set forth), any internal combustion engine fuels as herein defined for use in the state after it reaches this state.

Section 2 of said chapter, as amended by Chapter 212 of the Public Laws of 1925, provides:

"There is hereby levied and imposed an excise tax of three cents per gallon upon said internal combustion engine fuels sold within this state and for the uses defined in this act, excepting, however, such internal combustion engine fuels in such form and under such circumstances as shall preclude the collection of this tax from the distributor by reason of the provisions of the laws of the United States, or sold wholly for exportation from the state, provided that two cents of the tax so paid and no more upon such internal combustion engine sold for exclusive use in motor boats, etc., shall be refunded as hereafter provided."

Section 6, as amended provides:

"Every distributor shall on or before the fifteenth day of each month, render a report to the state auditor, stating the number of gallons of internal combustion engine fuels received, sold and used in the state by them during the preceding calendar month on forms to be furnished by said auditor, and said report shall contain such further information pertinent thereto as said auditor shall prescribe. On or before the first day of the calendar month succeeding the filing of said report, each distributor shall pay to the treasurer of state a tax of three cents per gallon upon each gallon so reported as sold or distributed. On or before the first day of each calendar month, the state auditor shall transmit to the treasurer of state such information as shall show all taxes due from each distributor under the provisions of this act."

Said Chapter 224 is further amended by Section 5 of Chapter 212 of the Public Laws of 1925, by adding to said Chapter 224, Section 11, which provides for a refund to the consumer in certain cases of two-thirds of the amount of the tax paid by him, etc.

Section 3 of said Chapter 224 provides:

"Every distributor of such internal combustion engine fuel in the state shall file a duly acknowledged certificate with the state auditor. . . . No distributor as herein defined shall sell or distribute any such internal combustion engine fuel until such certificate is furnished as required by this act."

From the foregoing, it is evident that the "distributor" is the party obligated to pay the tax to the treasurer of state. The information required to be transmitted by the auditor to said treasurer, showing the amount of taxes due from each distributor, must be in accordance with the information contained in the distributor's report as rendered to said auditor. Unless said reports of the distributor indicate the quantity of said internal combustion engine fuels sold or distributed, which are within the exceptions contained in Section 2, as aforesaid, said auditor has no power to make an exception in favor of any user of said fuels.

In case the distributor's report should show that a certain quantity of said fuel to be sold or distributed by him was exempt from the tax under the provisions of the aforesaid exemptions, then the treasurer of state, upon the receipt of such information, should deduct from the tax required to be assessed on the whole amount of such fuel sold or distributed the amount assessed on that which is exempt under the foregoing exceptions, which might include fuel sold or distributed to the United States Customs Service and fuel sold wholly for exportation from the State.

There does not appear to be any provision of the gasoline tax acts which authorizes a refund to the consumer of more than two-thirds of the amount of the tax paid.

Sanford L. Fogg
Deputy Attorney General

Note: See opinion of August 25, 1925, from the same to the same.