

# MAINE STATE LEGISLATURE

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October 2, 1931

To Elbert D. Hayford, State Auditor  
Re: Gasoline Supposedly but not Actually for Export Only

I have your inquiry regarding gasoline purchased at Lubec tax free on the statement that it was to be exported and actually used by the purchaser in part in American waters.

Taking the situation step by step we have it as follows,-

The tax is imposed on distributors. Gasoline sold by a distributor for export is, of course, wholly exempt from tax. Such gasoline sold by a retailer who has already paid the tax to the wholesaler is sold by him to the customer free from tax, and he calls in turn for a refund. In the case of the retailer, the burden of proof is on him to establish his right to the refund; in the case of the wholesaler to establish his right to a deduction.

In either case they must show that the gasoline was "sold wholly for exportation from the state". If the dealer combined or cooperated with the purchaser in defeating the purpose of the tax act, he would, I should say, be criminally liable under Section 10 as evading or violating a provision of the act.

After the gasoline has been purchased tax free for the purpose of exportation, if the seller has not participated in a knowing evasion of the act, I see no way under the present law that you can reach him for any penalty or punishment. All you can do is require a strict proof in connection with the claim for refund of any tax paid or for omission from distributor's report for the gasoline sold by the distributor tax free.

As far as the purchaser is concerned, the only possibility I see under the act is that, if it could be proved that he uses tax free gasoline within the territory of the State, he might be liable criminally under Section 10 as having evaded the act. There is, of course, considerable difficulty of proof in any such case, and some indefiniteness as to the statute. The statute imposed a tax on gasoline sold and used, to be collected from the distributor. If a person knowingly uses tax free gasoline, it would seem that he is evading a provision of the act, but it may be that you need to have the act stiffened to cover such cases expressly.

Clement F. Robinson  
Attorney General

CFR/V