

# MAINE STATE LEGISLATURE

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July 28, 1932

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

. . . Under the gasoline tax law as amended by the special session of 1932, there can be in the future no question on the point either as to substance or procedure. The State now makes out a prima facie case against any distributor by showing from an audit the amount of gasoline obtained or imported for distribution,- it is then up to the distributor to show any defense or deduction he claims. This corrects the inadequacy of the previous law and, incidentally, clarifies the ambiguous 1% clause which distributors procured at the regular session.

Under the law as it stood prior to April 1, 1932, as interpreted by the Law Court in the Standard Oil Company's case, there was a difficult question of procedure. The tax was levied on sales, on distributions to branches and on nothing else. On a showdown the State's audit would be of little legal effect. If issue were taken, the State's case would have to be proved by evidence of actual sales and distributions actually made to branches. In such case the State's audit of gasoline received would merely put a certain burden of explanation on the distributor which he could readily meet by a claim of use or less. Failure to pay the tax would not even deprive the distributor of his license.

As I have frequently said to those of you who have had the duty of collecting and auditing the tax under the previous law,- you are particularly to be congratulated on the excellent results secured, in view of the procedural situation, results which have been secured by the efficiency and firmness of those charged with the collection of the tax, combined with a real spirit of cooperation on the part of most distributors. . . .

But in the ultimate analysis the only effect of the statutory 1% provision as it then stood was to give you a talking point in making a tax adjustment. This much the statute lets you allow in making your audit; but if the distributor claimed that this was insufficient and refused to pay,- on an action in court the State could only recover for the amount it could prove had been actually sold by the distributor in Maine, or distributed to its branches,- figures which on an issue taken must be proved by the testimony of the distributors' own employees and the evidence from its own books.

If I can be of any help to you in the adjustment\*. . . I shall be glad to do so; but my informal suggestion is,- get what you can, with firmness and persistence, - put the burden of explanation on the company as far as you can,- but don't bring the case to a legal issue, for if it comes to that, we will be helpless to enforce a proper collection.

Clement F. Robinson  
Attorney General

\*Of tax on a shipment made prior to the effective date of the amendment.