

MAINE STATE LEGISLATURE

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August 10, 1933

Honorable Frank H. Holley
State Tax Assessor
Augusta, Maine

Dear Mr. Holley:

I am herewith complying with your request asking a ruling upon the following:

"When the loss of gasoline exceeds one percent of actual receipts in this State; if, in your opinion, we could collect a four cent tax on gasoline which had been properly accounted for by temperature correction or other reasonable facts submitted by the distributor.

"As an illustration: An audit of the Standard Oil Company of New York, Inc., now in progress, will undoubtedly show a shrinkage in excess of one percent, which said Oil Company claim can be accounted for by temperature adjustments, shrinkage from handling, etc.

"The question of this Bureau is, can four cents per gallon tax be collected upon said shrinkage in excess of one percent?"

Section 84 of Chapter 12 of the Revised Statutes of 1930, as amended, provides, in substance, that every distributor shall on or before the fifteenth day of each month, report to you the number of gallons of gasoline received, sold and used in the State by the distributor during the preceding calendar month.

It further provides that on or before the first day of the calendar month succeeding the filing of said report, such distributor shall pay to the Treasurer of State a tax of four cents upon each gallon so reported as sold, distributed or used.

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The section further provides that each distributor shall pay within fifteen days after demand, a tax of four cents per gallon upon each gallon of such fuel upon which the tax has not been paid which, upon an audit by you, shall be found to have been received by the distributor and not properly accounted for in a report; making a further provision that not more than one percent from the amount of fuel received, according to the facts as you find them to be, if you are satisfied that there has been a loss through shrinkage, evaporation or handling, and allowing you further to make a deduction where you are satisfied on definite proof submitted to you that there has been a loss through fire, accident, or some unavoidable calamity.

In 131 Maine, Page 63, State of Maine vs. Standard Oil Company of New York, the Court has stated that the law, which at that time existed, was intended to limit the tax to sales of combustion fuels. As that case had to do with the imposition of a tax on the gasoline used by a distributor himself, and the judgment of the Court being that gasoline used by the distributor was not subject to the tax, the legislature in Special Session in 1932 extended the tax to cover not only the sale of gasoline in the State, but the use of it.

Outside of the above, the law has not been materially changed so as to affect the question which you present.

As above quoted, in substance, a distributor should pay a tax of four cents upon each gallon reported as sold, distributed, or used. Where you find a report is not accurate and truthful, the fourth sentence of Section 84 comes to your assistance and it is then for you to ascertain the facts; and the legislature, apprehending that it might be difficult for you to ascertain the exact facts from a reluctant distributor, has provided that you may tax four cents per gallon upon each gallon of gasoline received and not accounted for, with a provision that you may allow not more than one percent from the amount of fuel received to take care of shrinkage, evaporation or handling, with a further deduction, upon definite proof submitted to you, for gasoline which you find to have been consumed by fire or removed from the possession of the distributor by accident or some unavoidable

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calamity. This one percent for the deduction, as above stated, applies simply where you discover that the distributor is not properly accounting for all of the gasoline he has received.

If you are satisfied that the distributor is properly accounting for gasoline received when he reports that more than one percent of the gasoline received has disappeared through shrinkage, evaporation, handling, or what not, you are to levy tax simply upon the gasoline which he has sold, distributed, or used; and the provision for one percent deduction in the fourth sentence need not concern you.

Very truly yours,

Attorney General

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