

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date September 23, 1963

To Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

From Ralph W. Ferris, Asst. Attorney General pt. " " "

Subject Application of Sales Tax to Refund Gasoline

## FACTS:

The State Tax Assessor has been deducting sales tax on refunds for gasoline purchased under section 166, Chapter 16, R.S., and the 101st Legislature enacted Chapter 367, P.L. 1963, amending section 160, Chapter 16, R.S. by inserting the word "commercial" before the words "motor boat" in two places, and amended section 167 of said chapter by inserting the words "and pleasure motor boats not used for commercial purposes," the State Tax Assessor had been deducting sales tax from refunds of 6¢ of the 7¢ tax for nonhighway use, and the refund of 6¢ on tax consumed in commercial boat operations with eight mills of the remaining penny being paid over to the Sea and Shore Fisheries Department, and under the 1963 amendment he proposes to deduct the sales tax on refunds of 3¢ on fuel used in noncommercial boats, 3¢ of the remaining 4¢ to be paid over to the "boating facilities fund"; on the refund of 3¢ tax on fuel used in piston engine aircraft under section 167, Chapter 16, and on the refund of 3¢ under 167-A and the refund of 3¢ tax paid on fuel in local bus operations he has not been deducting the sales tax from the amount of the refunds.

## QUESTION:

Whether under the sales tax law subsection VIII of section 10, Chapter 17, R.S. should we deduct the applicable sales tax from all types of refunds noted below, or should we deduct the sales tax only in certain types of refunds, and in the latter case which types of refunds are to be subjected to a deduction for sales tax?

- a. The normal refund of 6¢ of the 7¢ tax for non-highway use. The remaining penny of tax is retained by the state;
- b. A refund of 6¢ of tax on fuel consumed in commercial boats, with eight mills of the remaining penny being paid over to the Sea and Shore Fisheries Department for research activities;
- c. A refund of 3¢ on fuel used in noncommercial boats, with 3¢ of the remaining 4¢ being paid over to the boating facilities fund;

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- d. Refund of 1¢ of tax on fuel used in piston engine aircraft, with the remaining 4¢ being paid over to the aeronautical fund.
- e. Refund of 5¢ of tax on jet aviation fuel, with remaining 2¢ being paid over to the aeronautical fund; and
- f. Refund of 1¢ of tax paid on fuel used in local bus operations.

ANSWER AND OPINION:

It is our opinion that you should continue to deduct the sales tax on refunds under category "a" and "b" and also after September 21st deduct the sales tax on refunds under category "c."

As to categories "d" and "e" it is our opinion that you should deduct from the refund the sales tax on the gasoline and motor fuels purchases for aircraft as aircraft is a vehicle and not used on the highway; the statute provides that the tax payable upon such fuels not used by vehicles on the highway shall be deducted from the refund. (For the definition of "vehicle" see Volume 44, page 147, Words and Phrases, and United States v. One Pittsirn Biplane, 11 Fed. Supp. 24). In regard to category "f" relating to gas sold to buses or common carriers under section 164-A, we are of the opinion that you should not deduct a sales tax on refunds of tax paid on fuel used in local bus operations.

RWF:opf

# STATE OF MAINE

Inter-Departmental Memorandum Date September 12, 1963

To Ralph W. Farris, Assistant Attorney General Dept. Bureau of Taxation

From Ernest H. Johnson, State Tax Assessor Dept. Bureau of Taxation

Subject Application of sales tax to refund gasoline

Subsection VIII of Section 10 of Chapter 17 provides that sales of gasoline and motor fuels upon which the tax is now imposed by the state or any other state or province, shall be exempt from the sales tax; "but the tax payable upon such fuels not used by vehicles on the highway shall be deducted from any refund of the gasoline tax sought by the purchaser."

We have six basic refund situations. These are as follows:

a. The normal refund of 6¢ of the 7¢ tax for nonhighway use. The remaining penny of tax is retained by the state;

b. A refund of 6¢ of tax on fuel consumed in commercial boats, with 8 mills of the remaining penny being paid over to the Sea & Shore Fisheries Department for research activities;

c. A refund of 3¢ on fuel used in noncommercial boats, with 3½¢ of the remaining 4¢ being paid over to the boating facilities fund;

d. Refund of 3¢ of tax on fuel used in piston engine aircraft, with the remaining 4¢ being paid over to the aeronautical fund.

e. Refund of 5¢ of tax on jet aviation fuel, with remaining 2¢ being paid over to the aeronautical fund; and

f. Refund of 3¢ of tax paid on fuel used in local bus operations.

The above refund provisions are found in sections 160, 166, 166a, 167 and 167a of Chapter 16 of the Revised Statutes, as last amended by Chapter 367 of the Public Laws of 1963.

I find that we have been deducting sales tax from refunds made under the first category, general nonhighway use, and the second category, commercial boat operations, and we propose to do so with respect to the third category, refunds for fuel used in pleasure boats. On the other hand, I find that we have not been deducting sales tax on refunds in the last three categories, namely aviation fuel and fuel used in local bus operations. Up to the present time we apparently have distinguished between those cases where only 1¢ of tax was retained by the state, and those cases where a more substantial portion of the tax was retained. However, under Chapter 367 of the Public Laws of 1963, the refund situation with respect to fuel used in pleasure boats is going to be quite comparable with that applying to aviation fuel, in that only 3¢ will be refunded and 4¢ will go to a special fund for the benefit of both users.

JARMEB YEN:OTA  
ATTORNEY GENERAL

Will you please advise whether under the terms of the sales tax law we should deduct the applicable sales tax from all types of refunds noted above, or whether we should deduct the sales tax only in the case of certain types of refunds. In the latter case, will you please specify those types of refund which are to be subjected to a deduction for sales tax.

EHJ:J