

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date March 21, 1966

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

From Jon R. Doyle, Asst. Attorney General Dept. " " "

Subject Application of Gasoline Tax and Use Fuel Tax in Highway Construction

Your memorandum of January 24, 1966 poses two questions:

1. Whether a gasoline tax refund can be made in the case of gasoline consumed in unregistered trucks operating on and off the right-of-way of a highway location under construction but not open to public use?

2. Whether the use fuel tax would apply to diesel fuel consumed in registered and unregistered trucks operating on such a location.

LAW

Gasoline Tax Act

A refund of 6/7 of the gasoline tax is provided for in the case of certain off-highway use in Title 36 M.R.S.A. § 2908. The provision for refund is applicable as specified only when the use is other than:

" . . . in motor vehicles operated or intended to be operated upon any of the public highways of this State" (Emphasis supplied).
Title 36 M.R.S.A. § 2908.

Use Fuel Tax Act

The Use Fuel Tax Act is applicable when such fuel (other than gasoline) is used to propel vehicles on the "public highways." (Title 36 M.R.S.A. § 3025).

The following definition of "public highways" is found in the Act:

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"Public highways' shall mean and include every way or place, of whatever nature, generally open to the use of the public as a matter of right for the purposes of vehicular travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair."
Title 36 M.R.S.A. § 3022 (5).

REASONS

Use Fuel Taxation

This office has previously ruled (January 28, 1942 and December 18, 1946) that for use fuel taxation purposes, a highway location shall be regarded as a highway from the time of taking of the land by the highway department for highway purposes.

These opinions were based on the language of the statute defining public highways which in particular contains the word "construction" together with the words "reconstruction," "maintenance" and "repair." Construction, of course, denotes the building of a new highway. It is my opinion that the previous opinions are still controlling.

Therefore, for the purposes of taxation under the Use Fuel Tax Act any way is a "public highway" if it generally is open to the public although it may be temporarily closed for construction. The highway location here falls within this definition.

There is a further problem of whether the trucks operated on the location are to be considered "vehicles which are prohibited by law from operating on the public highways." If they are prohibited they should not be taxed since the definition of user under the Use Fuel Tax Act relates to use in any vehicles "on the public highways of this State, except in vehicles which are prohibited by law from operating on the public highways"

There is no question, even under the general interpretation of the word "public highways" that those vehicles which are registered are not prohibited by law from operating on the public highways and thus the fuel consumed in them will be taxable. Under the definition of "public highways" in the use fuel tax law, the unregistered vehicles are operating on a

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"public highway" for tax purposes regardless of whether they could legally operate on a public highway within the meaning of that term in the motor vehicle registration law. Too, there is no factual evidence showing that they would be prohibited by law from operating on public highways if they were registered.

Therefore, I would conclude as to the use fuel tax question, that both registered and unregistered vehicles operating on the highway location are subject to the use fuel tax.

I agree with you that diesel fuel consumed in both the registered and unregistered trucks which operate off the highway location is not subject to the use fuel tax.

Gasoline tax

In this problem, only unregistered trucks are operating on the highway location which has not been opened to public use. Unlike the Use Fuel Tax Act the Gasoline Tax Act contains no definition of public highway. The refund provision (Title 36 M.R.S.A. § 2908) is conditioned upon operation in places other than on the "public highways" of the State.

Other than the provisions of the Use Fuel Tax Act, other Maine statutes containing definitions of "highway" or "public highway" are not particularly helpful. (See Title 1 M.R.S.A. § 72, subsection 6; Title 23 M.R.S.A. § 2; Title 29 M.R.S.A. § 1, subsection 21). Title 23 M.R.S.A. § 2 which is a part of the general highway law does provide that:

" The word "highway" shall mean all the right-of-way that may have been laid out by the State, county or town" (Emphasis supplied).

This does indicate, at least in a general sense, that even ways which are only laid out are to be considered as highways. There is an indication that this definition is applicable to the motor vehicle law but in practice it does not seem to be followed since it is my understanding that it has been the policy of the Secretary of State to allow trucks to operate on highway locations under construction without registration.

The definitions of "highway" in the case law of the State are not particularly helpful either. Therefore, we must attempt to ascertain the legislative intent behind the utilization of the phrase "public highways."

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"The fundamental rule of statutory construction is to ascertain and carry out the legislative intent. The language of the statute is 'the vehicle best calculated to express the intention' but the Court will 'look at the object in view.'" *Acheson, et al. v. Johnson*, 147 Ms. at page 280.

Too, the intention of the Legislature must be sought by an examination of all parts of the statute and not from any particular word or phrase. See *Camp Walden v. Johnson*, 156 Ms. at page 163.

It is therefore my opinion that our Court, lacking a definition in the Gasoline Tax Act of "public highway" would adopt the definition contained in the Use Fuel Tax Act because both taxing provisions are part of an over-all taxing scheme which seeks to impose a tax on various types of fuel used in motor vehicles.

I believe that the Legislature must have intended that the result of taxation be equal and the same in both instances, otherwise two trucks, one gasoline and one diesel, might be subject or not subject to tax under the same circumstances.

Therefore, the result would be that those trucks operating on a highway location would be subject to the gasoline tax since the trucks are operating on the "public highways" of the State and as under the Use Fuel Tax Act the operation would be in "motor vehicles operated or intended to be operated upon these public highways." We must bear in mind that we are here dealing with the definition of public highways for taxing purposes and so long as trucks are operated on those "public highways" under the definition in the statute the fuel consumed is thus taxable and no refund of tax paid would be allowed.

Again, as in the Use Fuel Tax Act, those trucks operating off the highway location would not be subject to tax.

JRD:epd