

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 5, 1973To Ernest H. Johnson, State Tax Assessor Dept. Bureau of TaxationFrom Maldemar G. Buschmann, Asst. Atty. Gen. Dept. Bureau of TaxationSubject Title 36, §2908 M.R.S.A.; Gasline Tax RefundSYLLABUS:

THE REGISTERING OF A COMMERCIAL MOTOR VEHICLE FOR HIGHWAY USE DEMONSTRATES THE NECESSARY INTENT TO OPERATE SAID "VEHICLE UPON ANY OF THE PUBLIC HIGHWAYS OF THIS STATE" SO THAT THE REFUND REFERRED TO IN TITLE 36, §2908 M.R.S.A. IS NOT APPLICABLE TO ANY OF THE FUEL CONSUMED IN SAID VEHICLE WHETHER OR NOT THE FUEL WAS CONSUMED ON OR OFF THE PUBLIC HIGHWAYS.

FACTS:

(Hypothetical) A commercial log loader is registered for highway use. Seventy-five percent of the internal-combustion engine fuel consumed by said log loader results from off-highway use of said vehicle. An application has been properly filed with the State Tax Assessor for a tax refund based on the above off-highway consumption of internal-combustion engine fuel.

QUESTION:

Is the Bureau of Taxation justified in taking the position that no refund should be granted in the above situation?

ANSWER:

Yes.

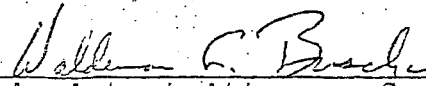
REASONS:

Title 36, §2908 M.R.S.A. states that the tax refund shall not be given for commercial "motor vehicles operated or intended to be operated upon any of the public highways of this State, or turnpikes operated and maintained by the Maine Turnpike Authority." While there can be no question as to what was meant by "motor vehicles operated . . . upon any of the public highways," there is no definite answer as to what the language "intended to be operated" means. A reasonable interpretation would be that if it is intended that a commercial vehicle is going to be used on the public highways to any degree at all then said commercial vehicle is not entitled to any refund under §2908.

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Intent is an intangible that is not easily determined. In the instant matter, as an administrative practicality, the Bureau of Taxation should measure intent "to be operated upon . . . the public highways . . ." by whether or not the vehicle in question is registered to be driven "upon . . . the public highways . . ." After all, the only reason said vehicle would be so registered is to be operated "upon . . . the public highways . . ."

Therefore, the Bureau would be "justified in taking the position that no refund would be applicable for gasoline used in any vehicle while that vehicle is registered for highway use." Arguably a court of law might decide that a refund might be due for gasoline used in a commercial vehicle registered for highway use but used almost exclusively on private roads. The issue is not clear cut, to wit: see Attorney General opinions numbered 390 and 397. However, the Bureau's present position is the only administratively practical one and it is well justified by the language of Section 2908.


Assistant Attorney General

WGB:gr