

MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 830

S. P. 205

In Senate, March 7, 1933.

Reported by Senator Weatherbee of Penobscot from Committee on Claims and laid on table to be printed under joint rules.

ROYDEN V. BROWN, Secretary.

Presented by Senator Weatherbee of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

RESOLVE, Appropriating Money to Pay the Claim of Madawaska Company of Van Buren Against the State of Maine.

Madawaska Company reimbursed. Resolved: That there be and hereby is appropriated the sum of \$1,663.38 to reimburse the Madawaska Company for that amount of money without legal right collected from it by the state during the years 1931 and 1932 and then erroneously alleged by the state to be due under the provisions of chapter 12 of the revised statutes relating to a tax on gasoline, said sum to be paid from the appropriation for refunds on internal combustion motor fuel.'

STATEMENT OF FACTS

From the year 1925 to the present time the Madawaska Company has been carrying on extensive woods operations in the State of Maine. For the conduct of its operations it has purchased from time to time outside the state large quantities of gasoline. Said gasoline has been transported into the state at the Canadian boundary and has always been used to convene the Company's operations on its own private roads and no part of the same has ever been sold or used to propel vehicles upon public highways. Believing the same was not subject to tax up to March, 1931, reports of quantities imported and used were not made to the State Auditor. At that time it was ruled by the Attorney General that all gasoline theretofore used by said Company was subject to tax. Suit to recover the gross sum of \$34,678.79 was threatened. This represented a three cent tax for the year 1927 and a four cent tax for subsequent years. Inasmuch as the gasoline was not sold and was not used on state highways the Company would have been entitled to a refund down to one cent. Such refund, however, could only be made on applications filed with the State Auditor within six months from the date of purchase of the invoice. As a result of this limitation the Company's refund would only apply to a small part of the gasoline in question. Still believing that its gasoline was not taxable but in order to obtain refund for the prior period of six months, there was paid under protest the sum of \$5,189.72. \$3,892.29 of this was subsequently refunded. Thereafterwards down to February 11, 1932, likewise to protect itself, from time to time the full four cents was paid and the three cents refund was made, so that the total one cent tax withheld up to and including February 11, 1932, amounted to \$1,663.38.

During this period and while said payments were being so made the Attorney General and the Madawaska Company's counsel were negotiating as to the tax claimed to be due for prior years and as to the liability to any tax, with a view of amicable litigation by which the legal question might be determined.

While these negotiations were still pending the Supreme Judicial Court in the case of State against Standard Oil Company decided that the gasoline tax theretofore imposed by Sections 79-86 of Chapter 12 of the Revised Statutes applied only to gasoline and fuel oil **sales** within the state and not to the mere **use** of such oil and gas. Admittedly this Company had not made sales; hence it was not subject to tax. Having protected its rights by protest said Company is now clearly entitled to the refund sought by this resolve.

The 1932 Special Session of the Legislature amended the gasoline tax law to cover the use of gasoline in this state, and on all quantities used since April, 1932, said Madawaska Company has paid its full tax and received its refund.