Opinion No. 360.

Taxation—Gasoline License Tax—Motor Vehicles—Licenses—Federal Land Bank—Federal Intermediate Credit Bank.

HELD: The Federal Land Bank of Spokane and the Federal Intermediate Credit Bank of Spokane are not subject to the state gasoline license tax and motor vehicle license fees while operating their automobiles within this state in the conduct of their businesses as agencies of the federal government.

October 2, 1936.

Mr. Phil Greenan
Chief Clerk, State Board of
Equalization
The Capitol

You have asked us whether or not in our opinion the Federal Land Bank of Spokane and the Federal Intermediate Credit Bank of Spokane are subject to our gasoline license tax and motor vehicle license fees when operating their automobiles within this state in the conduct of their businesses.

The Federal Land Bank of Spokane was established under the authority of Chapter 7 and the Federal Intermediate Credit Bank of Spokane under the authority of Chapter 8, Title 12, of the United States Code Annotated. Each of them is a regularly organized or constituted corporation (Secs. 676, 1023), and shall act as a fiscal agent of the government when so designated by the Secretary of the Treasury. (Secs. 701, 1024). A part of the capital stock of the land bank and all of the capital stock of the credit bank are owned by the United States. (Secs. 692, 698, 1061). The net earnings of the latter shall be divided into equal parts, one-half to be paid to the United States and the balance into a surplus fund until it amounts to 100 per centum of the subscribed capital stock, and thereafter but 10 per centum of the earnings to be paid into the surplus. After these requirements have been met, the then net earnings shall be paid to the United States as a franchise tax. The net earnings received by the United States shall, in the discretion of the Secretary of the Treasury, be used to supplement the gold reserve or be applied to the reduction of the outstanding bonded indebtedness of the United States. (Sec. 1072). Section 931 of Chapter 7 provides that: "Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section 761 and section 781 of this chapter. First mortgages executed to Federal land banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation." Section 1111 of Chapter 8 provides that: "The privileges of tax exemption accorded under section 931 shall apply also to each Federal Intermediate Credit Bank, including its capital, reserve, or surplus, and the income derived therefrom, and the debentures issued under this title shall be deemed and held to be instrumentalities of the Government and shall enjoy the same tax exemptions as are accorded farm loan bonds in said section."

In view of the law applicable to them, the courts have frequently declared that federal land banks are instrumentalities of the federal government, engaged in the performance of an important governmental function. (Smith v. Kansas City Title & Trust Co., 255 U. S. 180; Federal Land Bank v. Priddy, 295 U. S. 229; Federal Land Bank v. State Highway Department, 173 S. E. 284; Federal Land Bank of Baltimore v. Hubard, 178 S. E. 16; Ellingson v. Iowa Joint Stock Land Bank, 264 N. W. 516; Leuthold v. Des Moines Joint Stock Land Bank, 266 N. W. 450). Though the courts have not so far determined the status of federal intermediate credit banks, the conclusion is inescapable that they, too, are instrumentalities of the United States. (Smith v. Kansas City Title & Trust Co., above; Ellingson v. Iowa

Joint Stock Land Bank, above; Leuthold v. Des Moines Joint Stock Land Bank, above; 34 Ops. U. S. Atty. Gen. 23).

It is well settled that the state may not tax the instrumentalities of the general government. It is equally well settled that the state may not impose a burden of any other kind upon such instrumentalities. (2 Cooley on Taxation, sec. 606, p. 1286; 61 C. J. 371; McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579; Johnson v. Maryland, 254 U. S. 51; Federal Land Bank v. Crosland, 261 U. S. 374; Fort v. Great Falls, 46 Mont. 292; Mid-Northern Oil Co. v. Walker, 65 Mont. 414; Federal Land Bank v. State Highway Department, supra; Federal Land Bank of Baltimore v. Hubard, supra; Dallas Joint Stock Land Bank v. Ballard, 74 S. W. 297).

In Panhandle Oil Co. v. Mississippi, 277 U. S. 218, the court held that a state tax imposed on dealers in gasoline for the privilege of selling, and measured at so many cents per gallon of gasoline sold, cannot apply to sales to instrumentalities of the United States, such as the Coast Guard Fleet and a Veterans' Hospital.

In Graves v. Texas Co., 80 L. Ed., Adv. Sheet 824, the court held that a state excise tax upon storers of gasoline, accruing at the time of withdrawal from storage, cannot be imposed in respect of gasoline withdrawn for the purpose of sale to the United States for use in performing governmental functions.

In Johnson v. Maryland, supra, the court held that an employee of the Post Office Department could not be required to obtain a license from the State of Maryland before exercising the right of driving a government motor truck over a post-road in that state in the performance of his official duty.

In Federal Land Bank v. Crosland, supra, the court held that a first mortgage executed to a federal land bank is an instrumentality of the government and cannot be subjected to a state recording tax. In Federal Land Bank of Baltimore v. Hubard, supra, the supreme court of appeals of Virginia held to the same effect.

In Federal Land Bank v. State Highway Department, supra, the supreme court of South Carolina held that a federal land bank's automobile used in the conduct of its business is an instrumentality of the United States and for that reason is not subject to state license fees.

We think former Attorney General Foot did not give the case of Panhandle Oil Co. v. Mississippi, supra, the force to which it was properly entitled when he advised the state board of equalization (14 Ops. of Atty. Gen. 352) that a gasoline license tax could be imposed by this state upon gasoline sold to the Federal Land Bank of Spokane for use in its business. There is no substantial difference between the Mississippi statute construed in the Panhandle case and our Gasoline License Tax Law so far as the character of the tax itself is concerned.

It is our conclusion, therefore, that the Federal Land Bank of Spokane and the Federal Intermediate Credit Bank of Spokane are not subject to our gasoline license tax and motor vehicle license fees when operating their automobiles within this state in the conduct of their businesses as agencies of the government.