

Taxation—Gasoline Sales—License Taxes—Highway Fund.

Gasoline license taxes collected under the provisions of section 2392, R. C. M. 1921, as amended by chapter 150, laws of 1923, should be distributed as provided in this chapter and not as provided in the amendment as contained in chapter 186, laws of 1925.

State Highway Commission,
Helena, Montana.

May 11, 1925.

Gentlemen :

You have submitted for an opinion the question of whether under the provisions of section 2392, R. C. M. 1921, as amended by chapter 150, laws of 1923, as amended by chapter 186, laws of 1925, requiring the state

treasurer to distribute all moneys received by him after April 1st, 1925, in payment of license tax on gasoline sales, distribution should be made as provided for in this section as amended by chapter 150, or whether distribution should be made as provided for in this section after its amendment by chapter 186.

The question affects the highway fund in this way: Under the provisions of section 2392, before its amendment by chapter 186, the highway fund received 20 per cent of all moneys received under the license tax, while under the provisions of the section as now amended the fund receives but 15 per cent of the license tax.

Chapter 186 applies only to distributors carrying on business for the last three quarters of the year 1925 and each year thereafter.

Section 2384, as amended by chapter 186, laws of 1925, provides that such license tax shall be paid for the quarters ending respectively March 31st, June 30th, September 30th, and December 31st, in each year, beginning with the quarter *ending June 30th, 1925*.

Section 2392, as amended by this chapter, provides for the distribution of all moneys received by the state treasurer in payment of license taxes *under the provisions of this act*.

It is apparent from the foregoing that the act was not intended to apply to license taxes due prior to the time the act took effect, which was April 1st, 1925, and while it repeals "all acts and parts of acts in conflict herewith," yet it provides no method of distributing taxes paid under the former act, and if we say that the provision of the former act with reference to distribution of the tax is repealed then we must also say that the remainder of the act is also repealed and that all taxes due under the former act cannot be collected for want of legal authority.

It is apparent, however, that what the legislature intended was that each act should have effect on all matters occurring within the time of its operation and that all taxes collected for the first quarter of 1925 should be distributed under the provisions of the act under which they were collected and that all taxes paid under the provisions of chapter 186 should be distributed as provided in section 2392, as amended by this chapter.

This construction is further aided by the fact that section 2392, as amended by chapter 150, session laws of 1923, contained the identical language with reference to the distribution affecting moneys collected *under the provisions of this act*, and was held to apply only to license taxes collected after March 31st, 1923.

It is, therefore my opinion that the distribution of all license taxes collected from gasoline sales made prior to April 1st, 1925, should be distributed as provided in section 2392 of chapter 150, session laws of 1923.

Very truly yours,

L. A. FOOT,
Attorney General.