

**Gasoline—License Taxes—Refund—Claims—Drawback—
State Board of Equalization.**

The state board of equalization may not allow a claim for refund for gasoline license tax when the gasoline was used for a purpose which made it tax-exempt when the claim is not presented within 90 days from the date of the purchase thereof.

State Board of Equalization,
Helena, Montana.

July 26, 1927.

Gentlemen:

You have requested my opinion whether you may allow a refund or drawback of 3 cents per gallon for gasoline used for the purposes specified in chapter 17 of the laws of 1927 when the application therefor is filed with your board after ninety days from the date of the purchase of the gasoline.

By chapter 17 of the laws of 1927 a right to a refund or drawback of 3 cents per gallon on gasoline used is conferred. The right is dependent upon certain conditions. One of the conditions specified by this law is that the gasoline shall have been used for one of the purposes therein specified. Another condition provided by the act as a prerequisite to its exercise is that a sworn statement containing the information required shall be presented to the state board of equalization "within the time allowed by law."

The act in fixing this time provides:

"All such applications for refunds or drawbacks shall be filed with the State Board of Equalization within (90) days after the date on which such gasoline was purchased as shown by such invoices."

The act does not expressly state what the penalty shall be for failure to file the statement required within the ninety day period. However, as above stated, the right is made dependent upon the filing of the statement within the time allowed by law and this is an implication, at least, that if not filed within the required time the right does not exist.

It is therefore my opinion that your board may not allow a refund or drawback on gasoline used for the purposes specified in chapter 17, laws of 1927, when the application therefor is not filed within the ninety day period specified in the act within which the application shall be made.

Very truly yours,

L. A. FOOT,
Attorney General.