

Gasoline — License Taxes — Interstate Commerce — Exports—Refunds—Citizens—Aliens.

A citizen of Canada is entitled to a refund on gasoline on which he pays a license tax in this state when the gasoline is used in Canada and the board of equalization is satisfied of that fact.

April 11, 1928.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have asked my opinion whether gasoline dealers who sell gasoline to citizens of Canada are obliged to pay the tax provided for in chapter 19, laws of 1927.

By this chapter, and particularly by section 2 thereof, the dealer is obliged to pay the tax on all gasoline handled by him. The last clause in this section, however, exempts any gasoline "moving in or on account of sales of gasoline constituting interstate or foreign commerce." Likewise, section 11 of the act provides as follows:

"No gasoline exported out of the State of Montana shall be included in the computation of any dealer's license tax herein provided for."

I believe by section 11, however, that it is intended by the legislature to exempt only such gasoline as a dealer exports out of the state. If the dealer sells it to citizens of Canada in Montana, or the citizens of Canada obtain the gasoline from the dealer in this state the same should be included in computing the tax. If, on the other hand, the dealer in Montana sells and delivers the gasoline to citizens of Canada in Canada, then it should not be included.

As to gasoline sold in this state and delivered by the dealer to citizens of Canada who use the same in Canada I believe the refund may be allowed under chapter 17 of the laws of 1927 upon satisfactory proof being furnished to the state board of equalization that such gasoline was not used upon the highways of this state but used in a foreign country.

I believe it makes no difference whether the gasoline used by citizens of Canada was used for agricultural or other purposes, or whether used upon the highways in Canada; if the same was not used upon the highways of this state and that if satisfactory proof is furnished to the board of equalization the refund should be made. No refund, however, should be allowed to citizens of Canada upon gasoline sold to them and delivered to them in Canada by dealers in Montana who have not paid the tax thereon.

Very truly yours,

L. A. FOOT,
Attorney General.