

Taxation—Gasoline License Taxes—License Taxes—Refund—Dealer—User.

The consumer of gasoline who has paid the taxes to a dealer is not entitled to a refund when the gasoline is used for agricultural purposes when the dealer has failed to pay the taxes to the state of Montana.

November 28, 1928.

State Board of Equalization,
Helena, Montana.

Gentlemen:

You have requested my opinion on the following question:

In a case where a consumer of gasoline has purchased a number of gallons of gasoline and has paid the dealer the tax on the same but

the dealer has never paid to the state the three cent tax as levied by chapter 19, laws of 1927, would said consumer be entitled to a refund under our gasoline refund law, the same as if said dealer had paid said tax?

In section 1 of chapter 17, laws of 1927, we find the following language:

“That any person who shall purchase and use any gasoline, with reference to which there has been paid, under the laws of this state licensing dealers in gasoline, a tax at the rate of three cents (3c) per gallon, for the purpose of operating or propelling stationary gas engines, * * * shall be allowed and paid as a refund or drawback an amount of money equal to three cents (3c) multiplied by the number of gallons so purchased and used. * * *”

The same section provides that certain evidence shall be presented to the state board of equalization, et cetera.

The meaning of this section, and particularly with reference to the language “with reference to which there has been paid, under the laws of this state,” can refer to no other than chapter 19 of the session laws of 1927, section 3 of which reads in part as follows:

“Each dealer shall * * * render a true statement to the State Treasurer * * * and shall accompany such statement with * * * an amount equal to three cents (3c) per gallon for each gallon of gasoline so handled and not paid by any other dealer in this state.”

The word “dealer” is defined in subsection 7 of section 1, chapter 19, laws of 1927, as “any person who engages in the business in the state of Montana of producing, refining, manufacturing or compounding or of purchasing in this state, or of importing into this state, gasoline for sale or use in this state.” The above language clearly makes one who purchases gasoline for use in this state a “dealer” within the meaning of the law. Therefore, chapter 19 makes a purchaser for use liable for the tax on any gasoline, which has not been paid.

In view of the above, it is therefore my opinion that you are not permitted under the law to make a refund to any consumer of gasoline where the dealer has not paid the tax on said gasoline.

Very truly yours,

L. A. FOOT,
Attorney General.